Town and County of Nantucket
Select Board • County Commissioners

Dawn E. Hill Holdgate, Chair
Thomas M. Dixon
Matt Fee
Malcolm W. MacNab
Brooke Mohr

16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Manager

AGENDA FOR THE MEETING OF THE SELECT BOARD
NOVEMBER 13, 2023 – 11:00 AM
REMOTE PARTICIPATION VIA ZOOM WEBINAR
NANTUCKET, MASSACHUSETTS

YOU TUBE LINK FOR VIEWING ONLY:
https://youtube.com/live/l7ZZattCm60

ZOOM WEBINAR REGISTRATION LINK TO VIRTUALLY ATTEND MEETING:
https://us06web.zoom.us/webinar/register/WN_JnwFb_JqRkq8KitkIavzHA

I. CALL TO ORDER

II. LICENSING AND PETITIONS – LICENSE HOLDER REQUESTS

1. Request for Approval of Application for Pledge of Seasonal All-Alcoholic Beverages Innholder License for Nantucket Island Management, LLC dba Brant Point Grill/White Elephant for Premises Located at 50 Easton Street to Secure a Loan.

2. Request for Approval of Application for Pledge of Seasonal All-Alcoholic Beverages Innholder License for Nantucket Island Management, LLC dba The Wauwinet Inn for Premises Located at 120 Wauwinet Road to Secure a Loan.

3. Request for Approval of Application for Change of Hours for Annual Wine and Malt Beverages Restaurant License for Annapurna Restaurants, LLC dba Sophie T's for Premises Located at 8A Bayberry Court to Extend Liquor Service from 9:00 PM to 11:00 PM.

III. LICENSING AND PETITIONS - PUBLIC HEARINGS

1. Public Hearing to Consider Application for Change of Classification from Annual to Seasonal All-Alcoholic Beverages Restaurant License for Nantucket Restaurant Management Corp. dba Faregrounds Restaurant, Kimberly Puder, Manager, for Premises Located at 27 Fairgrounds Road (Application Has Been Withdrawn).

2. Public Hearing to Consider Application for Alteration of Premises of Seasonal All-Alcoholic Beverages Restaurant License for Lemon Press Market, LLC dba Lemon Press, Rachel Afshari, Manager, for Premises Located at 41 Main Street,

to Remove Prep Kitchen on Second Floor from License; Request for Determination that the Premises Licensed to Sell Alcoholic Beverages is Not Detrimental to the Spiritual Activities of a Church Pursuant to Section 16C of MGL Chapter 138.

3. Public Hearing to Consider Application for New Common Victualler with Annual All-Alcoholic Beverages Restaurant License for Casa Real Restaurant and Bar Inc. dba Casa Real Restaurant and Bar, Mayra Escobar, Manager, for Premises Located at 5 Macys Lane.

4. Public Hearing to Consider Application for New Live Entertainment License for Casa Real Restaurant and Bar Inc. dba Casa Real Restaurant and Bar, Mayra Escobar, Manager, for Premises Located at 5 Macys Lane.

IV. LICENSING AND PETITIONS - COMPLIANCE HEARING

1. Hearing to Address Multiple Violations for Annual All-Alcoholic Beverages Restaurant License for Mingo Corporation dba The Muse, Michael O'Reilly, Manager, for Premises Located at 44 Surfside Road.

V. LICENSING AND PETITIONS – OTHER ITEMS

1. Licensing Review of Select Board Licensing Meeting Process and Agendas.

VI. ADJOURNMENT

Town & County of
NANTUCKET, MA

LIQUOR LICENSE PUBLIC HEARING PROCESS

---

1. Select Board Chair opens the public hearing and may outline the procedure to be followed.

2. The Licensing Administrator reviews the pending application. The applicant addresses the Board and answers questions.

3. Public comment is taken.
- If applicable, read into record any written objections received from school, church or hospital located within 500 feet.

4. The chair invites questions from the Board and closes the public hearing.

5. The Board makes a decision to approve or deny.

6. Pursuant to MGL c. 138, §23 and Ballarin v. Licensing Board of Boston, denials must be based on reasonable grounds; ABCC and courts prefer findings based on:
-- the appropriateness of a liquor license at a particular location
-- the number of existing dispensaries in Town
-- the views of the inhabitants of the locality in which a license is sought
-- traffic, noise, size (typically applies to a new location)
-- the sort of operation that carries the license
-- the reputation of the applicant

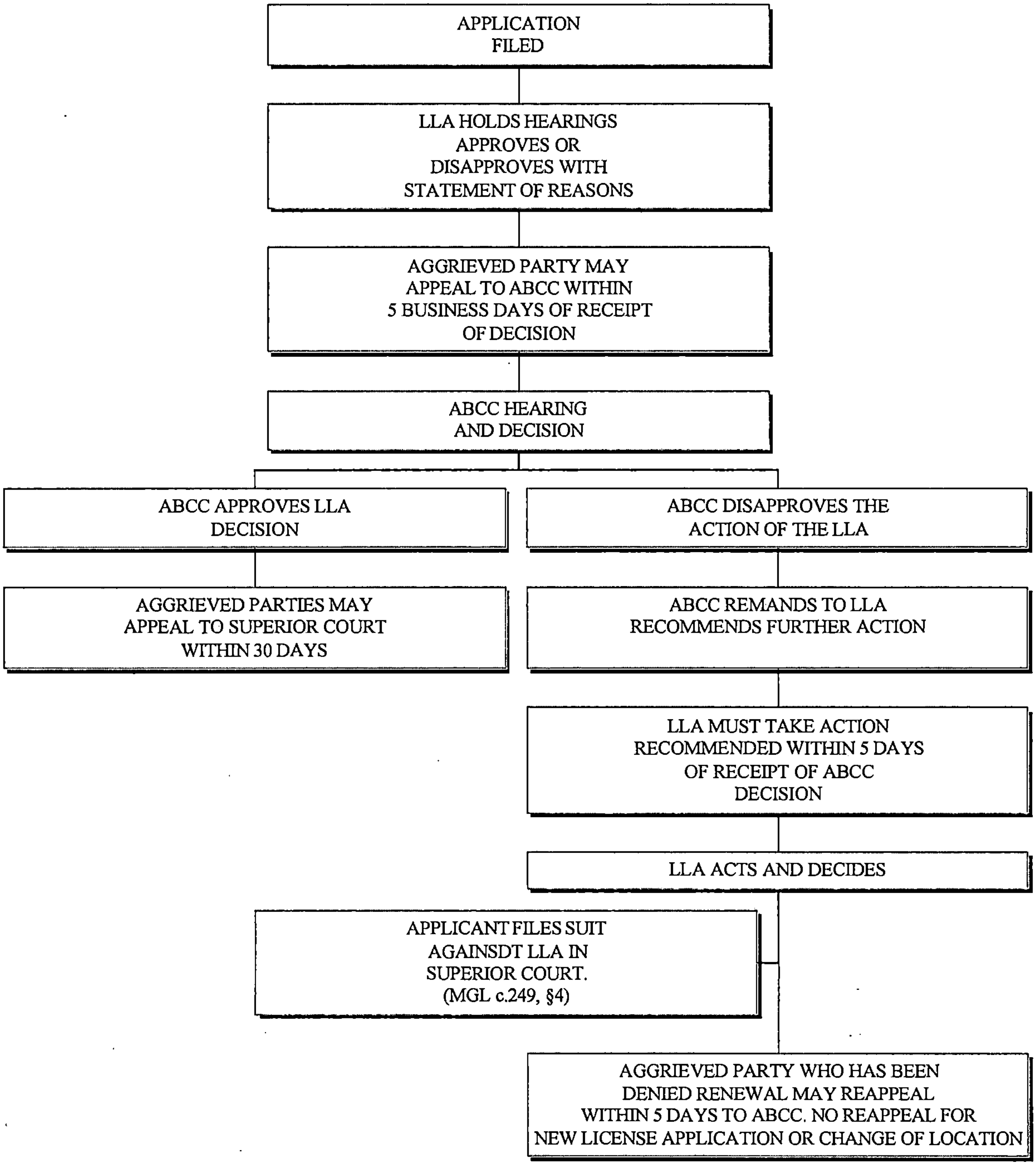
7. If an approved application is within 500ft of a school or church (as determined by the Abutter's list from the Town Assessor's Office), the Board must also vote to make a determination that the liquor license is not detrimental to the activities of the school/church.

8. A written decision is required to be sent to the applicant. No need for reasons if the application if simply approved, but if there is a denial or conditions are imposed, the reasoning for this is required to be in the decision. Therefore, the Board should vote on basis for denial or conditions as well [concerns with traffic, another licensee located adjacent to property, limiting hours, etc.].

9. DENIALS: Upon delivery of a denial decision, the applicant has 5 business days to appeal the decision to the ABCC. If no appeal is made, the applicant may re-apply in one year from date of denial.

10. APPROVALS: Final approved applications are sent to the ABCC within 3 business days of the Select Board decision. The ABCC review and approval period can take up to 2 months.

DENIAL OF APPLICATIONS



KP | LAW
eUpdate

Entertainment Licensing

The provision of public entertainment, whether live or prerecorded, requires an annual license issued by the municipality. There are two sections of G.L. c.140 that primarily govern this issue. **General Laws Chapter 140, §181** applies to locations that do not have alcohol or common victualler licenses and present "theatrical exhibitions, public shows, public amusements and exhibitions of every description" for which an admission fee is collected. By contrast, **G.L. c.140, §183A** applies to licenses for establishments that do have an alcohol and/or common victualler license and that provide "any concert, dance, exhibition, cabaret or public show of any description", regardless of whether there is a charge for admission. While licensing authorities have some discretion in this area, the denial of an entertainment license application requires a narrow finding based upon legitimate public health or safety concerns. In addition, in order to withstand a legal challenge, a decision to suspend or revoke an entertainment license must also have a compelling basis.

Section 181

This statute requires the license application to set forth all details of the event, particularly with regard to the extent that the "conditions or premises would affect the public safety, health or order." Importantly, G.L. c.140, §181 provides a statutory presumption in favor of the grant of an entertainment license. Unlike virtually every other type of licensing statute, the burden of proof is on the licensing authority to show why the license should not issue. Thus, the record of the license hearing must contain substantial evidence of the anticipated public harm. See Konstantopoulos v. Town of Whately, 384 Mass. 123, 128 (1981). Section 181 provides that if a license is denied, the licensing authority must make a finding that:

> issuance of such a license would lead to the creation of a nuisance or would endanger the public health, safety or order by:
>
> a) unreasonably increasing pedestrian traffic in the area in which the premises are located, or
> b) increasing the incidence of disruptive conduct in the area in which the premises are located, or
> c) unreasonably increasing the level of noise in the area in which the premises are located.

The licensing authority may impose conditions on an entertainment license, but "said conditions may only relate to compliance with applicable laws or ordinances, or to public safety, health or order, or to steps required to be taken to guard against creation of a nuisance or to insure adequate safety and security for patrons or the affected public."

In summary, an entertainment license may be subject to reasonable conditions, but a license generally should not be denied unless the officials are convinced that no conditions can address the health and safety concerns. Conditions such as a police detail to handle traffic, a cut-off time for amplified music, and the provision of bathroom facilities would all be permissibly related to health and safety issues.

Section 183A

General Laws c.140, § 183A also establishes a presumption that the licensing authority will issue an entertainment license for events occurring in an establishment with an alcohol and/or common victualler license, unless significant problems are likely. In particular, to deny the license, the licensing authority must conclude that the activity at issue, whether by itself or in combination with other activities at the licensed premises, cannot be conducted in such a in a manner so as to (1) protect the employees, patrons, or public, whether inside or outside the premises, from "disruptive conduct, from criminal activity, or from health, safety or fire hazards"; (2) prevent unreasonable increases in the area noise level, whether from the activity or people leaving the premise; or, (3) prevent an unreasonable increase in foot or vehicle traffic, or vehicle parking. Where the statute specifically references noise, the licensing authority may consider outdoor music or amplification as a factor in assessing whether a particular activity will create an unreasonable noise increase. Conditions on a G.L. c.140, §183A license must again be aimed at preserving the "public health, safety and order."

Sunday Entertainment

Significantly, G.L. c.140, §§181 and 183A licenses address public entertainment from Monday through Saturday only. Sunday entertainment is governed by G.L. c.136, §4, which is a holdover of the Commonwealth's so-called "Blue Laws." A Sunday license must be approved by the local licensing authority, as well as the Massachusetts Department of Public Safety. The municipality may impose a fee of up to $20.00 per event, while the Department may impose a fee of $5.00 per event. The following link on the Department's website includes a Sunday license form and some "FAQs" on the subject: http://www.mass.gov/ocabr/government/oca-agencies/dpl-lp/opsi/regulated-activities-special-licensing-.html

Please contact Attorneys Brian W. Riley (briley@k-plaw.com) or Thomas W. McEnaney (tmcenaney@k-plaw.com) at 617.556.0007 with further questions on entertainment or general licensing issues.

TOWN OF NANTUCKET, MASS. INCORPORATED 1671

Agenda Item Summary

Agenda Item #	II. 1.
Date	11/13/2023

Staff

Amy Baxter, Licensing Administrator

Subject

Liquor License Pledge of License Application – ***Nantucket Island Management, LLC dba Brant Point Grill, 50 Easton Street, License #0115-HT-0762***

Executive Summary

Nantucket Island Management, LLC is applying to Pledge of License for a ***Seasonal Hotel All Alcoholic Beverages*** Liquor License for ***DBA Brant Point Grill/White Elephant*** at ***50 Easton Street***.

Staff Recommendation

Applicant has met all requirements to file a Pledge of Liquor License. The Licensee is in full compliance with all local and state regulations and has not had any outstanding violations or issues on record.

Requirements for Pledge of Liquor License:

- DOR Certificate of Good Standing
- DUA Certificate of Compliance
- Change of Pledge of License Application
- Vote of the Entity
- Pledge documentation
- Promissory Note

Background/Discussion

In Massachusetts, the holder of a liquor license can pledge his or her license to secure a loan. M.G.L. c. 138, §23. There are several legal requirements a licensee must be aware of, and in compliance with, in order to properly effectuate an enforceable Pledge of their liquor license.

Massachusetts Law states that "any license granted under the provision of this chapter may be pledged for a loan provided approval of such a loan and pledge is given by the local licensing authority and the Commission [ABCC]."

The law permits three different kinds of liquor assets/property to be pledged. These are:

1. Licenses that authorize the sale of alcoholic beverages; 2. Corporate Stock in a corporation that holds a license to sell alcoholic beverages; and 3. Alcoholic beverages themselves which a licensee is authorized to sell.

Impact: Environmental ☐ Fiscal ☐ Community☐ Other☐

N/A

Board/Commission Recommendation

N/A

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

N/A

Attachments

ABCC Pledge of License Application and Supporting Documents; Brant Point Grill Liquor License

The ***Commonwealth of Massachusetts***
Alcoholic Beverages Control Commission

☐ For Reconsideration

LICENSING AUTHORITY CERTIFICATION

City /Town: Nantucket

ABCC License Number: 00115-HT-0762

TRANSACTION TYPE (Please check all relevant transactions):

The license applicant petitions the Licensing Authorities to approve the following transactions:

☐ New License
☐ Transfer of License
☐ Change of Manager
☐ Change of Officers/ Directors/LLC Managers
☐ Change of Location
☐ Alteration of Licensed Premises
☐ Change Corporate Name
☐ Change of Ownership Interest (LLC Members/ LLP Partners, Trustees)
☐ Change of Class (i.e. Annual / Seasonal)
☐ Change of License Type (i.e. club / restaurant)
☐ Change of Category (i.e. All Alcohol/Wine, Malt)
☐ Issuance/Transfer of Stock/New Stockholder
☐ Other
☐ Change Corporate Structure (i.e. Corp / LLC)
☒ Pledge of Collateral (i.e. License/Stock)
☐ Management/Operating Agreement
☐ Change of Hours
☐ Change of DBA

APPLICANT INFORMATION

Name of Licensee: Nantucket Island Management, LLC

DBA: Brant Point Grill/White Elephant

Street Address: 50 Easton Street, Nantucket, MA

Zip Code: 02554

Manager: Bernhard Johannes Duermeler

Granted under Special Legislation? Yes ☐ No ☒

If Yes, Chapter

of the Acts of (year)

§12 Hotel	Seasonal	All Alcoholic Beverages
Type (i.e. restaurant, package store)	Class (Annual or Seasonal)	Category (i.e. Wines and Malts / All Alcohol)

DESCRIPTION OF PREMISES Complete description of the licensed premises

Dining Room, Kitchen, Patio, Pool Area, Lounge, Bar. Twenty (20) Guest Rooms on second floor. 24 Cottages.

LOCAL LICENSING AUTHORITY INFORMATION

Application filed with the LLA: Date 10/20/2023 Time

Advertised Yes ☐ No ☒ Date Published Publication

Abutters Notified: Yes ☐ No ☒ Date of Notice

Date APPROVED by LLA 11/13/2023

Decision of the LLA **Approves this Application**

Additional remarks or conditions
(E.g. Days and hours)

For Transfers ONLY:

Seller License Number: Seller Name:

The Local Licensing Authorities By:

Alcoholic Beverages Control Commission
Ralph Sacramone
Executive Director

BEAUDETTE AND SWAIN
PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
35 OLD SOUTH ROAD, SUITE D
P.O. BOX 2049
NANTUCKET, MASSACHUSETTS 02584

RICHARD P. BEAUDETTE
BRYAN J. SWAIN

PHONE: (508) 228-4455
FAX: (508) 228-3070
WWW.NANTUCKETLAWFIRM.COM

OF COUNSEL
KEVIN F. DALE
WILLIAM F. HUNTER

Thursday, October 19, 2023

RECEIVED
OCT 19 2023
BY:

VIA HAND DELIVERY

Amy C. Baxter
Licensing Administrator
2 Fairgrounds Road
Nantucket, MA 0254
abaxter@police.nantucket-ma.gov

Re: Nantucket Island Management, LLC
d/b/a Brant Point Grill / White Elephant
Application to Pledge Collateral
50 Easton Street, Nantucket, MA 02554
License No. 115-HT-0762

Dear Amy:

My office represents Nantucket Island Management, LLC, d/b/a Brant Point Grill / White Elephant, in the above-referenced matter. Enclosed, please find a completed application to pledge collateral in connection with the White Elephant's liquor license, and the following materials related thereto:

1. ABCC Payment Receipt;
2. Monetary Transmittal Form;
3. DOR Certificate of Good Standing;
4. DUA Certificate of Compliance;
5. Change of Pledge of License, Stock or Inventory Application;
6. Vote of the Entity;
7. Pledge documentation;
8. Promissory note, and

9. The local filing fee.

Please let me know if you have any questions. I can be reached by email at rick@nantucketlawfirm.com, or by phone at 508-228-4455.

Sincerely,

Richard P. Beaudette, Esq.

Encl.
CC: Nantucket Island Management, LLC

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION
MONETARY TRANSMITTAL FORM

APPLICATION FOR AMENDMENT-Pledge of Collateral

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.

ECRT CODE: RETA

Please make $200.00 payment here: ABCC PAYMENT WEBSITE

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY) 00115-HT-0762

ENTITY/ LICENSEE NAME Nantucket Island Management LLC DBA Brant Point Grill/White Elephant

ADDRESS 50 Easton Street

CITY/TOWN Nantucket **STATE** MA **ZIP CODE** 02554

For the following transactions (Check all that apply):

☐ New License
☐ Transfer of License
☐ Change of Manager
☐ Change of Officers/ Directors/LLC Managers

☐ Change of Location
☐ Alteration of Licensed Premises
☐ Change Corporate Name
☐ Change of Ownership Interest (LLC Members/ LLP Partners, Trustees)

☐ Change of Class (i.e. Annual / Seasonal)
☐ Change of License Type (i.e. club / restaurant)
☐ Change of Category (i.e. All Alcohol/Wine, Malt)
☐ Issuance/Transfer of Stock/New Stockholder
☐ Other

☐ Change Corporate Structure (i.e. Corp / LLC)
☒ Pledge of Collateral (i.e. License/Stock)
☐ Management/Operating Agreement
☐ Change of Hours
☐ Change of DBA

THE LOCAL LICENSING AUTHORITY MUST SUBMIT THIS APPLICATION ONCE APPROVED VIA THE ePLACE PORTAL

Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150-2358

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

APPLICATION FOR AMENDMENT-Pledge of Collateral

☒ **Pledge of License** ☐ **Pledge of Stock** ☐ **Pledge of Inventory**

- Payment Receipt
- Monetary Transmittal Form
- DOR Certificate of Good Standing
- DUA Certificate of Compliance
- Change of Pledge of License, Stock or Inventory Application
- Vote of the Entity
- Pledge documentation
- Promissory note

1. BUSINESS ENTITY INFORMATION

Entity Name	Municipality	ABCC License Number
Nantucket Island Management LLC	Nantucket	00115-HT-0762

Please provide a narrative overview of the transaction(s) being applied for. On-premises applicants should also provide a description of the intended theme or concept of the business operation.

Pledge of liquor license to Citizens Bank, N.A., as Administrative Agent, in connection with refinancing of mortgage loan.

APPLICATION CONTACT

The application contact is the person who should be contacted with any questions regarding this application.

Name	Title	Email	Phone
Richard P. Beaudette, Esq.	Attorney	rick@nantucketlawfirm.com	508-228-4455

2. AMENDMENT-Pledge Information

Pledge of License

Pledge of Inventory

Pledge of Stock

To whom is the pledge being made: Citizens Bank, N.A., as Administrative Agent

3. FINANCIAL DISCLOSURE

SOURCE OF FINANCING

Please provide signed financing documentation.

Name of Lender	Amount	Type of Financing	Is the lender a licensee pursuant to M.G.L. Ch. 138.
Citizens Bank, N.A.	$15,326,667.00	Mortgage Loan	○ Yes ● No
Cambridge Trust Company	$15,326,666.50	Mortgage Loan	○ Yes ● No
Rockland Trust Company	$15,326,666.50	Mortgage Loan	○ Yes ● No
			○ Yes ○ No

FINANCIAL INFORMATION

Provide a detailed explanation of the form(s) and source(s) of funding for the cost identified above.

APPLICANT'S STATEMENT

I, the: ☐ sole proprietor; ☐ partner; ☐ corporate principal; ☒ LLC/LLP manager
Authorized Signatory

of NED Manager LLC, Manager of Applicant
Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

(1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;

(2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;

(3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;

(4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;

(5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;

(6) I understand that all statements and representations made become conditions of the license;

(7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;

(8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and

(9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.

(10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature: Date: September 20, 2023

Title: Manager

ENTITY VOTE

The Board of Directors or LLC Managers of NED Manager LLC, the sole manager of Applicant
Entity Name

duly voted to apply to the Licensing Authority of Nantucket and the
City/Town

Commonwealth of Massachusetts Alcoholic Beverages Control Commission on September 20, 2023
Date of Meeting

For the following transactions (Check all that apply):

☒ Pledge of License

☐ Pledge of Inventory

☐ Pledge of Stock

☐ Other

"VOTED: To authorize Any one of Douglass E. Karp, Stephen R. Karp or Steven S. Fischman
Name of Person

to sign the application submitted and to execute on the Entity's behalf, any necessary papers and do all things required to have the application granted."

A true copy attest,

Douglass E. Karp

Corporate Officer / LLC Manager Signature

DOUGLASS E. KARP

(Print Name)

For Corporations ONLY

A true copy attest,

Corporation Clerk's Signature

(Print Name)

Commonwealth of Massachusetts
Department of Revenue
Geoffrey E. Snyder, Commissioner

mass.gov/dor

Letter ID: L1736203040
Notice Date: October 16, 2023
Case ID: 0-002-215-738

CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE

NANTUCKET ISLAND MANAGEMENT LLC
PO BOX 2580
NANTUCKET MA 02584-2580

Why did I receive this notice?

The Commissioner of Revenue certifies that, as of the date of this certificate, NANTUCKET ISLAND MANAGEMENT LLC is in compliance with its tax obligations under Chapter 62C of the Massachusetts General Laws.

This certificate doesn't certify that the taxpayer is compliant in taxes such as unemployment insurance administered by agencies other than the Department of Revenue, or taxes under any other provisions of law.

This is not a waiver of lien issued under Chapter 62C, section 52 of the Massachusetts General Laws.

What if I have questions?

If you have questions, call us at (617) 887-6400 or toll-free in Massachusetts at (800) 392-6089, Monday through Friday, 9:00 a.m. to 4:00 p.m..

Visit us online!

Visit mass.gov/dor to learn more about Massachusetts tax laws and DOR policies and procedures, including your Taxpayer Bill of Rights, and MassTaxConnect for easy access to your account:

- Review or update your account
- Contact us using e-message
- Sign up for e-billing to save paper
- Make payments or set up autopay

Edward W. Coyle, Jr., Chief
Collections Bureau

Department of Unemployment Assistance
Commonwealth of Massachusetts
Executive Office of Labor & Workforce Development

Certificate of Compliance

Date: October 4, 2023
Letter ID: L0000001382
Employer ID (FEIN): XX-XXX6262

NANTUCKET ISLAND MANAGEMENT LLC
PO BOX 2580
NANTUCKET MA 02584-2580

Certificate ID: L0000001382

The Department of Unemployment Assistance certifies that as of 03-Oct-2023, NANTUCKET ISLAND MANAGEMENT LLC is current in all its obligations relating to contributions, payments in lieu of contributions, and the employer medical assistance contribution established in G.L.c.149,§189.

This certificate expires in 30 days from the date of issuance.

Sincerely,

Katie Dishnica

Katie Dishnica, Director
Department of Unemployment Assistance

Questions?
Revenue Enforcement Unit
Department of Unemployment Assistance
Email us: Revenue.Enforcement@detma.org
Call us: (617) 626-5750

MANAGER'S CERTIFICATE

The undersigned, NED Manager LLC, a Delaware limited liability company (the "Company"), manager of Nantucket Island Management LLC, a Massachusetts limited liability company ("NIM") hereby certifies as follows:.

1. The Company is the duly appointed, qualified and sole manager of NIM;

2. As of the date hereof, Stephen R. Karp, Steven S. Fischman and Douglass E. Karp are all of the members of the Board of Managers of the Company; and

2. Attached to this certificate as Exhibit A is a complete and correct copy of actions adopted by all members of the Board of Managers of the Company, which actions were duly adopted, have not been repealed or amended, and remain in full force and effect as of the date hereof.

IN WITNESS WHEREOF, this certificate is executed as of the 20th day of September, 2023.

NED MANAGER LLC

By: Douglass E Karp
Name: Douglass E. Karp
Title: Manager

EXHIBIT A

NED MANAGER LLC

Action of Board of Managers

As of September 20, 2023

WHEREAS: The undersigned, being all of the managers constituting the Board of Managers of NED Manager LLC, a Delaware limited liability company (the "Company"), as manager of Nantucket Island Management LLC, a Massachusetts limited liability company ("NIM"), desire NIM to execute certain documents in connection with a pledge of that certain Innholder All Alcoholic Beverages License No. 00115-HT-0762 held by NIM d/b/a Brant Point Grill/White Elephant (the "Pledge of License") to Citizens Bank, N.A., as agent for itself and certain other lenders (the "Lender") in connection with a loan from the Lender to White Elephant Hotel LLC in the amount of $45,980,000, to be secured by a first mortgage on that certain real property and the improvements thereon commonly known as the White Elephant Hotel, located at 43 and 50 Easton Street and 4 Willard Street in Nantucket, Nantucket County, Massachusetts (the "Premises");

WHEREAS: The Company is the sole manager of NIM;

NOW THEREFORE, it is

RESOLVED: That the Company, as the sole manager of NIM, hereby authorizes NIM to execute and deliver any documents, certificates, authorizations, directions, or other writings on behalf of NIM as may be required with respect to the Pledge of License, as well as such other documents, instruments and agreements evidencing or in any way relating to the Pledge of License as any manager may deem to be necessary or desirable; and

RESOLVED: That each of Stephen R. Karp, Steven S. Fischman and Douglass E. Karp, the managers of the Company, acting in its capacity as the sole manager of NIM, is authorized, acting singly, to execute, acknowledge and deliver the petition for Pledge of License (with such changes, modifications, and alterations thereto as such manager in his sole discretion may deem necessary, proper or advisable) for and on behalf of the Company in its capacity as Manager of NIM, and to take, or cause to be taken, any and all further steps and actions and to execute, file and deliver any and all other agreements, documents, certificates and instruments as they (or any one of them) deem necessary, proper or advisable to carry out fully the intent and accomplish the purposes of the foregoing resolutions; and the taking of any such further actions and/or the execution, filing and/or delivery of any such agreements, documents, certificates and instruments by any such manager, acting singly, shall constitute conclusive evidence of the authority of such manager to do so and that the same was deemed necessary, proper or advisable and was approved, authorized and adopted hereby.

RESOLVED: This Action of the Board of Directors may be executed in counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument and that this instrument may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation of the foregoing, "electronic signature" shall include faxed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, and any execution by DocuSign.

Executed as of the date set forth above.

BOARD OF MANAGERS OF
NED MANAGER LLC

DocuSigned by:
By: Stephen R. Karp
2DD35DCA85474E3...
Name: Stephen R. Karp
Title: Manager

DocuSigned by:
By: Steven S. Fischman
7E10E5928C5A464...
Name: Steven S. Fischman
Title: Manager

DocuSigned by:
By: Douglass E. Karp
5F6B2242274748E...
Name: Douglass E. Karp
Title: Manager

PLEDGE AGREEMENT REGARDING LIQUOR LICENSE

[ATTACHED]

PLEDGE AGREEMENT REGARDING LIQUOR LICENSE

This Pledge Agreement (this "**Agreement**") is made as of September 20, 2023, by NANTUCKET ISLAND MANAGEMENT LLC, a Massachusetts limited liability company, having an office located at c/o New England Development, 75 Park Plaza, Third Floor, Boston, Massachusetts 02116 ("**Pledgor**"), to Citizens Bank, N.A., a national banking association having a place of business at 28 State Street, Boston, MA 02109, as Agent for itself and other lenders (the "**Lenders**") who are now or hereafter become party to the Loan Agreement (defined below) ("**Pledgee**").

RECITALS

A. White Elephant Hotel LLC, a Delaware limited liability company ("**WEH**"), is the owner of that certain real property and the improvements thereon commonly known as the White Elephant Hotel, located at 43, 50, 60 and 64 Easton Street and 4 Willard Street, Nantucket, Nantucket County, Massachusetts (the "**Hotel**") (those parcels located at 50, 60 and 64 Easton Street are sometimes collectively referred to herein as the "**Licensed Premises**").

B. Pursuant to the terms of that certain Management Agreement dated as of January 1, 1999, as affected by that certain Partial Termination of Management Agreement dated December 17, 2007, and as amended by that certain First Amendment of Management Agreement dated as of November 11, 2010 and that certain Second Amendment of Management Agreement dated as of September 7, 2023 (the "**Management Agreement**"), Pledgor has agreed to perform management services as agent of and for the account of WEH with respect to the Hotel.

C. WEH has entered into that certain Amended and Restated Term Loan Agreement with Pledgee, pursuant to which Pledgee has agreed to make a loan (the "**Loan**") to WEH in the original principal amount of $45,980,000 (the "**Loan Agreement**"). The Loan is evidenced by those certain promissory notes of even date herewith made by WEH to the order of each of the Lenders in the aggregate original principal amount of $45,980,000 (as amended from time to time, the "**Notes**").

D. Pledgor has entered into that certain Tri-Party Agreement dated as of April 5, 2016, pursuant to which Pledgor has agreed to grant to Pledgee a security interest in any and all licenses obtained by Pledgor with respect to the operation of the Hotel.

E. Pledgor holds that certain Innholder/All Alcoholic Beverages License No. 00115-HT-0762, a copy of which is attached hereto as <u>Exhibit A</u> (the "**Existing License**") with respect to the Licensed Premises, and has filed an application with the Nantucket Board of Selectmen and the Commonwealth of Massachusetts Alcoholic Beverages Control Commission (collectively, the "**Licensing Authorities**") for and a pledge of the Liquor License to Pledgee.

F. To induce Pledgee to enter into the Loan Agreement, disburse funds in accordance with the Loan Agreement, and execute all other documents in connection therewith, Pledgor hereby agrees to pledge, upon approval and issuance by the Licensing Authorities, and to the extent permitted by law, the Existing License and any future alcoholic beverages licenses obtained by Pledgor with respect to the Licensed Premises, as such licenses may be renewed, altered or amended from time to time (collectively, the "**Liquor License**"), as collateral security for the Loan. Capitalized terms not defined herein shall have the meanings ascribed to them in the Loan Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Pledgor and Pledgee hereby agree as follows:

1. Pledge. Pledgor hereby pledges to Pledgee and grants to Pledgee a security interest in the Liquor License, upon approval of same by the Licensing Authorities, and to the extent permitted by law, as collateral security for the payment and performance by Pledgor of its obligations under the Notes, the Loan Agreement and the other Loan Documents.

2. Agreements, Representations and Warranties. Pledgor agrees, warrants and represents as follows:

(a) Pledgor represents and warrants that it is the lawful owner of record of the Liquor License, free and clear of all liens and encumbrances (other than the security interest granted to Pledgee).

(b) Pledgor shall not sell, assign, transfer, pledge or otherwise encumber the Liquor License or any interest therein, except as permitted under the Loan Agreement, without the consent of Pledgee.

(c) To the best of Pledgor's knowledge, Pledgor is in compliance with, and Pledgor shall comply with, in all material respects, all applicable laws and regulations applying to the sale of alcoholic beverages and shall take all action reasonably necessary or desirable to preserve and maintain its rights under the Liquor License and keep the Liquor License in full force and effect.

(d) Pledgor shall promptly give Pledgee written notice of the commencement of any legal or administrative proceedings to suspend or revoke the Liquor License.

(e) Subject to any right to contest the same pursuant to the Loan Agreement, Pledgor has paid, and agrees to pay, when due all amounts that may be owed, or become owed, to the Commonwealth of Massachusetts as taxes or otherwise or owed specifically to the Massachusetts Department of Revenue.

(f) Pledgor has paid, and agrees to pay when due, all amounts due and owing to alcoholic beverage creditors, including wholesalers, of Pledgor.

(g) Pledgor is a validly created lawful entity under Massachusetts law, is authorized to enter into this Agreement, and is in good standing under the limited liability company laws of the Commonwealth of Massachusetts.

(h) Pledgor agrees to execute and deliver to Pledgee, at any time during which this Agreement shall be in effect, and to the extent permitted by applicable law, such further instruments as Pledgee may deem reasonably necessary to make effective this Agreement and the covenants of Pledgor contained herein.

3. Rights Upon Event of Default. Upon the occurrence and continuation of an Event of Default continuing beyond any applicable notice and cure period, as defined herein, Pledgee, at its option and without further notice to Pledgor, shall have the right to do one more of the following:

(a) immediately seek to have the Licensing Authorities approve the transfer of the Liquor License into the name of Pledgee or its nominee;

(b) sell or otherwise dispose of the Liquor License at public or private sale upon the giving of not less than ten (10) days notice prior to such sale and apply the proceeds thereof in accordance with this Agreement (it being understood and agreed that any such sale or disposition is subject to the approval of the Licensing Authorities); or

(c) pursue any right or remedy of a secured party under the Uniform Commercial Code.

Pledgor hereby irrevocably appoints Pledgee its attorney-in-fact for purposes of executing and delivering any instrument or document necessary or desirable for the exercise of any of the foregoing rights.

Pledgor will not hinder, delay, or interfere with Pledgee's exercise of any of the foregoing rights.

4. Event of Default. The occurrence of any of the following events shall constitute an Event of Default hereunder:

(a) a breach by Pledgor of any agreement, warranty, representation or covenant contained herein, including, but not limited to, any or all of the provisions of Section 2 above, which breach is not cured by Pledgor within thirty (30) days after Pledgor obtains knowledge of such breach;

(b) the suspension (for thirty (30) days or more) or revocation of the Liquor License; or

(c) any Event of Default under the Notes, the Loan Agreement or any of the other Loan Documents.

5. Application of Proceeds. Pledgee in its sole discretion may apply any and all proceeds obtained by Pledgee upon the realization of its security interest in the Liquor License, however arising, and other amounts collected or received in the exercise of its rights hereunder to any and all obligations of Pledgor to Pledgee, whether or not then due, and may exercise said rights without regard to the existence of any other security for any obligation. All monies that Pledgee shall receive in accordance with the provisions hereof, whether by transfer or sale of the Liquor License or otherwise, shall be applied in the following manner: first, to the payment of all costs and expenses incurred in connection with the administration and enforcement of or the

preservation of any rights under this Agreement or any of the reasonable expenses and disbursements of Pledgee (including, without limitation, the reasonable fees and disbursements of its counsel and agents) and, second, to the payment of any and all obligations of Pledgor to Pledgee.

6. No Obligation upon Pledgee. Unless and until Pledgee exercises its right hereunder and the Liquor License is transferred into the name of Pledgee or its nominee, nothing contained herein shall operate or be construed to obligate Pledgee to perform any of the terms, covenants or conditions contained in the Liquor License, or to impose any obligation upon Pledgee with respect to the Liquor License, or to place upon Pledgee any responsibility for the operation, control, care, management or repair of the Licensed Premises or for the payment, performance or observance of any obligation, requirement or condition under the Liquor License. The execution of this Agreement by Pledgor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Licensed Premises as well as the payment, performance or observance of any obligation, requirement or condition under the Liquor License is and shall be that of Pledgor except as set forth above.

7. No Waiver. The failure of Pledgee to avail itself of any of the terms, covenants and conditions of this Agreement for any period of time, or at any time or times shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of Pledgee under this Agreement are cumulative, are not in lieu of, and are in addition to any other rights and remedies which Pledgee shall have under or by virtue of the Notes, the Loan Agreement and the other Loan Documents. The rights and remedies of Pledgee hereunder may be exercised from time to time and as often as such exercise is deemed expedient by Pledgee.

8. Assignment by Pledgee. To the extent permissible under applicable law, including, without limitation, the approval of the Licensing Authorities as necessary, Pledgee shall have the right to assign to any party including, without limitation, any subsequent holder of the Notes or other Loan Documents or to any person acquiring title to the Licensed Premises, all of Pledgee's right, title, interest, power and authority with respect to the Liquor License vested in Pledgee by virtue of this Agreement or hereafter assigned to Pledgee.

9. No Change to Liquor License. Pledgor further covenants that, without the prior written consent of Pledgee, which shall not be unreasonably conditioned or delayed, Pledgor shall not cancel, abridge or substantially modify any of the terms, covenants and conditions of the Liquor License. Pledgor further agrees that, upon demand by Pledgee during the term of the Loan, Pledgor shall enter into any agreements, in substantially similar form to this Agreement, with Pledgee with respect to any agreement and/or license hereafter executed by Pledgor relating to the management and operation of the sale of alcoholic beverages at the Licensed Premises.

10. No Modification of this Agreement. No change, amendment, modification, cancellation or discharge hereof or of any part hereof shall be valid unless Pledgor and Pledgee shall have consented thereto in writing.

11. Conflicting Provisions. In the event of any conflict between the terms and provisions of the Loan Agreement and the terms and provisions of this Agreement, the terms and provisions of the Loan Agreement shall prevail. If any provisions of this Agreement or portion of

such provision or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement (or in the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

12. Notices. All notices given to Pledgor or to Pledgee pursuant to this Agreement must be in writing and shall be deemed to have been properly given or served by personal delivery or by sending same by overnight courier or by depositing same in the United States mail, postpaid and registered or certified, return receipt requested, in each case addressed as follows with an additional copy sent concurrently by email:

If to the Pledgee:

Citizens Bank, N.A.
28 State Street
Boston, MA 02109
Attn: Christopher F. Robie, Senior Vice President
Commercial Real Estate
Email: christopher.robie@citizensbank.com

with a copy to:

Hinckley, Allen & Snyder, LLP
28 State Street
Boston, Massachusetts 02109
Attn: Scott E. Cooper, Esq.
Email: scooper@hinckleyallen.com

If to the Pledgor:

c/o New England Development
75 Park Plaza, 3rd Floor
Boston, Massachusetts 02116
Attn: Kenneth A. Leibowitz
Email: kleibowitz@nedevelopment.com

with a copy to (if prior to May 1, 2024):

Goulston & Storrs, PC
400 Atlantic Avenue
Boston, MA 02110
Attn: Phillip G. Levy, Esquire
Email: plevy@goulstonstorrs.com

with a copy to (if May 1, 2024 or after):

Goulston & Storrs, PC
One Post Office Square
Boston, MA 02109
Attn: Phillip G. Levy, Esquire
Email: plevy@goulstonstorrs.com

13. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Pledgor, its successors and assigns, and Pledgee, its successors and assigns, and shall be governed by and in accordance with the laws of the Commonwealth of Massachusetts.

[Signature Page follows]

[Signature page to Pledge Agreement regarding Liquor License – White Elephant Hotel]

EXECUTED under seal as of the day and year first above written.

PLEDGOR:

NANTUCKET ISLAND MANAGEMENT LLC, a
Massachusetts limited liability company

By: NED Manager LLC,
a Delaware limited liability company,
its Manager

By: Douglass E Karp
Name: Douglass E. Karp
Title: Manager

Exhibit A

Innholder/All Alcoholic Beverages License No. 00115-HT-0762

[Attached]

LICENSE #: 00115-HT-0762 **LICENSE FEE: $3,900.00**

THE LICENSING BOARD *for the* TOWN OF NANTUCKET, MASSACHUSETTS

HEREBY GRANTS AN

SEASONAL RETAIL INNHOLDER LICENSE

TO EXPOSE, KEEP FOR SALE, AND TO SELL

ALL ALCOHOLIC BEVERAGES

TO BE CONSUMED ON THE PREMISES

BUSINESS: **Nantucket Island Management, LLC**
DBA: **BRANT POINT GRILL/ WHITE ELEPHANT**
PREMISES: **50 Easton Street**
Nantucket, MA 02554
MANAGER: **Bernhard Johannes Duermeler**

ON PREMISES DESCRIBED AS:
Dining Room, Kitchen, Patio, Pool Area, Lounge, Bar. Twenty (20) Guest Rooms on second floor. 24 Cottages.

The hours during which alcoholic beverages may be sold: In accordance with MGL Chapter 138 and amendments thereto with the local provision that patrons shall not be served alcoholic beverages before 8:00AM Monday through Saturday and 11:00AM on Sunday. **No alcohol service is permitted after 1:00AM** and patrons must be off the license premises and said **premises must be closed by 1:30AM**. Any restrictions apply as are on file with the local licensing authority. In accordance with Article 40 ATM 2001, Chapter 86.1 Board of Health Regulations Prohibit Smoking in Certain Places within the Town of Nantucket.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the Massachusetts General Laws, as amended and any rules or regulations made thereunder by the licensing authorities, including, but not limited to Chapter 250 of the Town of Nantucket Rules and Regulations Governing Alcoholic Beverages.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signature

Chair, Select Board

THIS LICENSE IS VALID APRIL 1, 2023 – JANUARY 15, 2024

**Unless earlier suspended, cancelled, or revoked*

FINANCING DOCUMENTS

[ATTACHED]

SUBSTITUTE PROMISSORY NOTE

(Citizens Bank, N.A.)

$15,326,667.00

Boston, Massachusetts
September 20, 2023

FOR VALUE RECEIVED, WHITE ELEPHANT HOTEL LLC, a Delaware limited liability company having an address c/o New England Development, 75 Park Plaza, 3rd Floor, Boston, Massachusetts 02116 (hereinafter referred to as "Maker" or "Borrower"), promises to pay to the order of CITIZENS BANK, N.A., a national banking association having a place of business at 28 State Street, Boston, Massachusetts 02109 (hereinafter referred to as "Payee" or "Citizens") the principal sum of FIFTEEN MILLION THREE HUNDRED TWENTY-SIX THOUSAND SIX HUNDRED SIXTY-SEVEN AND 00/100 DOLLARS ($15,326,667.00), payable at the times hereinafter specified, together with interest, in arrears, from the date hereof on the unpaid principal balance from time to time outstanding and on all unpaid installments of interest, as provided in the hereinafter defined Loan Agreement. Reference is made to the Loan Agreement and the Interest Rate Addendum attached thereto for certain definitions used in this Note.

This Note is in partial substitution for that certain Promissory Note of Borrower dated April 5, 2016 payable to the order of Citizens in the original principal amount of $41,160,000, as amended by that certain Benchmark Replacement and Extension Agreement between Borrower and Citizens, dated as of April 5, 2023 (as so amended, the "Original Note"). Payee is the present holder of the Original Note. This Note is issued in partial substitution for and replacement of the Original Note; however, it does not constitute a novation thereof.

After the occurrence of an Event of Default or after Maturity, interest shall accrue hereunder at the Default Rate.

Interest shall be payable on each Interest Payment Date and at the maturity hereof, until repayment in full of this Note, in accordance with the Interest Rate Addendum to the Loan Agreement. Interest only shall be payable through and including October 1, 2025. Thereafter, in addition to installments of interest, Borrower shall also pay to Agent, for the pro rata accounts of each of the Lenders, on each Interest Payment Date commencing November 1, 2025, consecutive monthly installments of principal in reduction of the aggregate unpaid principal balance of the Loan based on a 25-year amortization schedule and the actual Swap Rate then in effect ("Principal Amortization"), with the entire principal balance and all accrued and unpaid interest due and payable in full on the Maturity Date, subject to extension as provided in Section 3 of the Loan Agreement.

The entire principal balance, together with all unpaid interest, fees, expenses and other charges, if not sooner paid, shall in any event be paid in one (1) final installment on September 20, 2028 (the "Maturity Date"), subject to extension as provided in Section 3 of the Loan Agreement.

All sums payable hereunder are payable in lawful money of the United States of America and in immediately available funds to Payee, its successors or assigns (the "Holder"), in accordance with Section 20.14.3 of the Loan Agreement.

All sums paid under this Note prior to maturity or acceleration shall be applied first to any interest, fees, expenses and other charges then due and unpaid, with the remaining balance, if any, to be applied to unpaid principal. Any sums paid or received after maturity or acceleration shall be applied in such manner as the Holder may determine.

Whenever a day on which payment of interest and/or principal required to be made hereunder falls on a Saturday, Sunday or public holiday, such payment shall be due on the next following normal business day, and where time is extended for the payment of principal by virtue of the due date thereof falling on a Saturday, Sunday or public holiday, such extended time shall be included in the computation of interest.

This Note is referred to in a certain Amended and Restated Term Loan Agreement (the "Loan Agreement") dated as of the date hereof between (i) Borrower, (ii) Citizens, as "Agent" and as a "Lender", and (iii) the other "Lenders" now or hereafter party thereto, and is in all respect subject to the provisions thereof. All proceeds of this Note are to be advanced in accordance with the provisions of the Loan Agreement. The Holder is authorized to make, from time to time and based upon the Holder's records, notations on its records as to the date and amount of each payment of principal and interest received by the Holder, the principal balance of this Note, and the date to which interest has been paid. All such notations shall be presumed to be accurate in the absence of manifest error.

This Note is secured, inter alia, by a Mortgage and Security Agreement dated as of April 5, 2016 from Borrower to Citizens, as amended by an Amendment of Mortgage between Borrower and Agent of even date herewith (the "Mortgage"), with respect to certain real estate located at 43, 50, 60 and 64 Easton Street and 4 Willard Street in Nantucket, Massachusetts and more particularly described in the Mortgage (the "Mortgaged Property").

Any capitalized terms used in this Note and not otherwise defined in this Note shall have the same meaning as set forth in the Loan Agreement or, if not defined in the Loan Agreement, as set forth in the Mortgage.

Payee and any successor Holder may assign, transfer or negotiate this Note and any security for the performance of Maker's obligations hereunder, and in such event all the provisions of this Note and the Security Documents shall inure to the benefit of and may be exercised by or on behalf of the successor Holder, and all payments of principal and of interest due and to become due under this Note shall not thereafter be subject to any defense, counterclaim or set-off which Maker may have against any prior Holder.

Upon the occurrence of any Event of Default, this Note, at the option of the Required Lenders, shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Maker. The Required Lenders' failure to exercise such option shall not constitute a waiver of the right to exercise it at any other

time while such Event of Default continues to exist. Irrespective of the exercise or nonexercise of the foregoing option, in the event that any monthly installment of principal and/or interest herein provided for shall become overdue for more than ten (10) days, a "late charge" of five percent (5%) of the overdue installment shall become immediately due and payable to the Agent, for the pro rata benefit of Lenders, as liquidated damages for failure to make prompt payment, and the same shall be secured by the Security Documents.

No renewal or extension granted, or any indulgence shown to, or any release of, or any dealings between the Agent, Lenders or any Holder and any other person, corporation, or entity now or hereafter interested in this Note or in the property securing this Note, whether as owner, encumbrancer, grantor, or otherwise, shall discharge, extend or in any way affect the obligations of Maker hereunder.

Maker shall remain primarily liable on this Note and the Security Documents given to secure the same until full payment, unaffected by any alienation of all or any part of the property securing this Note, by any agreement or transaction between Agent, Lenders or any Holder and any alienee as to payment of principal, interest or other monies, by any forbearance or extension of time, guaranty or assumption by others, or by any other matter, as to all of which notice is hereby waived by Maker.

Maker will pay the legal and other fees and expenses of the Holder reasonably incurred in connection with or incidental to (i) the negotiation and closing of the loan evidenced by this Note, and (ii) the enforcement of any of the obligations of Maker or rights of the Holder under this Note, the Security Documents or any other agreement, document or instrument now or hereafter executed in connection herewith, by litigation or otherwise, after the occurrence of an Event of Default; and all such fees and expenses shall be indebtedness under this Note and shall be secured by the Security Documents.

All provisions of this Note and the Security Documents are expressly subject to the condition that in no event, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Payee hereunder and deemed interest under applicable law exceed the maximum rate of interest on the unpaid principal balance of this Note allowed by applicable law (the "Maximum Allowable Rate"), which shall mean the law in effect on the date of this Note, except that if there is a change in such law which results in a higher Maximum Allowable Rate being applicable to this Note, then this Note shall be governed by such amended law from and after its effective date. In the event that fulfillment of any provision of this Note or any of the Security Documents results in the interest rate hereunder being in excess of the Maximum Allowable Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess. If, notwithstanding the foregoing, Payee or any successor Holder receives an amount which under applicable law would cause the interest rate hereunder to exceed the Maximum Allowable Rate, the portion thereof which would be excessive shall automatically be applied to and deemed a prepayment of the unpaid principal balance of this Note and not a payment of interest.

This Note may not be modified or terminated orally.

This Note for all purposes shall be enforced and construed in accordance with the substantive law of the Commonwealth of Massachusetts, without resort to that state's conflict of laws rules.

The provisions of Section 35 of the Loan Agreement (entitled "Limitations on Recourse") are incorporated herein by reference.

[Signature Page to Follow]

IN WITNESS WHEREOF, Maker has caused this Note to be executed, under seal, by its manager, hereunto duly authorized, as of the date first above written.

Witnessed by:

WHITE ELEPHANT HOTEL LLC

By: NED Manager LLC,
Its Manager

By: Douglass E Karp
Name: Douglass E. Karp
Title: Manager

[Signature Page to Substitute Promissory Note (Citizens Bank, N.A.)]

JOINDER TO SUBSTITUTE PROMISSORY NOTE

Consent to the foregoing Substitute Promissory Note (the "Note") is hereby evidenced by CITIZENS BANK, N.A., a national banking association, the present holder of the Original Note (as defined in the Note). The undersigned hereby acknowledges and agrees that the Note is issued in partial substitution for and replacement of the Original Note; however, it does not constitute a novation thereof.

Witnessed by:

CITIZENS BANK, N.A.

By:______________________
Name: Christopher F. Robie
Title: Senior Vice President

[Signature Page to Substitute Promissory Note (Citizens Bank, N.A.)]

SUBSTITUTE PROMISSORY NOTE
(Cambridge Trust Company)

$15,326,666.50

Boston, Massachusetts
September 20, 2023

FOR VALUE RECEIVED, WHITE ELEPHANT HOTEL LLC, a Delaware limited liability company having an address c/o New England Development, 75 Park Plaza, 3rd Floor, Boston, Massachusetts 02116 (hereinafter referred to as "Maker" or "Borrower"), promises to pay to the order of CAMBRIDGE TRUST COMPANY, a Massachusetts trust company having a place of business at 1336 Massachusetts Avenue, Cambridge, Massachusetts 02138 (hereinafter referred to as "Payee") the principal sum of FIFTEEN MILLION THREE HUNDRED TWENTY-SIX THOUSAND SIX HUNDRED SIXTY-SIX AND 50/100 DOLLARS ($15,326,666.50), payable at the times hereinafter specified, together with interest, in arrears, from the date hereof on the unpaid principal balance from time to time outstanding and on all unpaid installments of interest, as provided in the hereinafter defined Loan Agreement. Reference is made to the Loan Agreement and the Interest Rate Addendum attached thereto for certain definitions used in this Note.

This Note is in partial substitution for that certain Promissory Note of Borrower dated April 5, 2016 payable to the order of Citizens Bank, N.A. ("Citizens") in the original principal amount of $41,160,000, as amended by that certain Benchmark Replacement and Extension Agreement between Borrower and Citizens, dated as of April 5, 2023 (as so amended, the "Original Note"). This Note is issued in partial substitution for and replacement of the Original Note; however, it does not constitute a novation thereof.

After the occurrence of an Event of Default or after Maturity, interest shall accrue hereunder at the Default Rate.

Interest shall be payable on each Interest Payment Date and at the maturity hereof, until repayment in full of this Note, in accordance with the Interest Rate Addendum to the Loan Agreement. Interest only shall be payable through and including October 1, 2025. Thereafter, in addition to installments of interest, Borrower shall also pay to Agent, for the pro rata accounts of each of the Lenders, on each Interest Payment Date commencing November 1, 2025, consecutive monthly installments of principal in reduction of the aggregate unpaid principal balance of the Loan based on a 25-year amortization schedule and the actual Swap Rate then in effect ("Principal Amortization"), with the entire principal balance and all accrued and unpaid interest due and payable in full on the Maturity Date, subject to extension as provided in Section 3 of the Loan Agreement.

The entire principal balance, together with all unpaid interest, fees, expenses and other charges, if not sooner paid, shall in any event be paid in one (1) final installment on September 20, 2028 (the "Maturity Date"), subject to extension as provided in Section 3 of the Loan Agreement.

All sums payable hereunder are payable in lawful money of the United States of America and in immediately available funds to Payee, its successors or assigns (the "Holder"), in accordance with Section 20.14.3 of the Loan Agreement.

All sums paid under this Note prior to maturity or acceleration shall be applied first to any interest, fees, expenses and other charges then due and unpaid, with the remaining balance, if any, to be applied to unpaid principal. Any sums paid or received after maturity or acceleration shall be applied in such manner as the Holder may determine.

Whenever a day on which payment of interest and/or principal required to be made hereunder falls on a Saturday, Sunday or public holiday, such payment shall be due on the next following normal business day, and where time is extended for the payment of principal by virtue of the due date thereof falling on a Saturday, Sunday or public holiday, such extended time shall be included in the computation of interest.

This Note is referred to in a certain Amended and Restated Term Loan Agreement (the "Loan Agreement") dated as of the date hereof between (i) Borrower, (ii) Citizens, as "Agent" and as a "Lender", and (iii) the other "Lenders" now or hereafter party thereto, and is in all respect subject to the provisions thereof. All proceeds of this Note are to be advanced in accordance with the provisions of the Loan Agreement. The Holder is authorized to make, from time to time and based upon the Holder's records, notations on its records as to the date and amount of each payment of principal and interest received by the Holder, the principal balance of this Note, and the date to which interest has been paid. All such notations shall be presumed to be accurate in the absence of manifest error.

This Note is secured, inter alia, by a Mortgage and Security Agreement dated as of April 5, 2016 from Borrower to Citizens, as amended by an Amendment of Mortgage between Borrower and Agent of even date herewith (the "Mortgage"), with respect to certain real estate located at 43, 50, 60 and 64 Easton Street and 4 Willard Street in Nantucket, Massachusetts and more particularly described in the Mortgage (the "Mortgaged Property").

Any capitalized terms used in this Note and not otherwise defined in this Note shall have the same meaning as set forth in the Loan Agreement or, if not defined in the Loan Agreement, as set forth in the Mortgage.

Payee and any successor Holder may assign, transfer or negotiate this Note and any security for the performance of Maker's obligations hereunder, and in such event all the provisions of this Note and the Security Documents shall inure to the benefit of and may be exercised by or on behalf of the successor Holder, and all payments of principal and of interest due and to become due under this Note shall not thereafter be subject to any defense, counterclaim or set-off which Maker may have against any prior Holder.

Upon the occurrence of any Event of Default, this Note, at the option of the Required Lenders, shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Maker. The Required Lenders' failure to exercise such option shall not constitute a waiver of the right to exercise it at any other

time while such Event of Default continues to exist. Irrespective of the exercise or nonexercise of the foregoing option, in the event that any monthly installment of principal and/or interest herein provided for shall become overdue for more than ten (10) days, a "late charge" of five percent (5%) of the overdue installment shall become immediately due and payable to the Agent, for the pro rata benefit of Lenders, as liquidated damages for failure to make prompt payment, and the same shall be secured by the Security Documents.

No renewal or extension granted, or any indulgence shown to, or any release of, or any dealings between the Agent, Lenders or any Holder and any other person, corporation, or entity now or hereafter interested in this Note or in the property securing this Note, whether as owner, encumbrancer, grantor, or otherwise, shall discharge, extend or in any way affect the obligations of Maker hereunder.

Maker shall remain primarily liable on this Note and the Security Documents given to secure the same until full payment, unaffected by any alienation of all or any part of the property securing this Note, by any agreement or transaction between Agent, Lenders or any Holder and any alienee as to payment of principal, interest or other monies, by any forbearance or extension of time, guaranty or assumption by others, or by any other matter, as to all of which notice is hereby waived by Maker.

Maker will pay the legal and other fees and expenses of the Holder reasonably incurred in connection with or incidental to (i) the negotiation and closing of the loan evidenced by this Note, and (ii) the enforcement of any of the obligations of Maker or rights of the Holder under this Note, the Security Documents or any other agreement, document or instrument now or hereafter executed in connection herewith, by litigation or otherwise, after the occurrence of an Event of Default; and all such fees and expenses shall be indebtedness under this Note and shall be secured by the Security Documents.

All provisions of this Note and the Security Documents are expressly subject to the condition that in no event, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Payee hereunder and deemed interest under applicable law exceed the maximum rate of interest on the unpaid principal balance of this Note allowed by applicable law (the "Maximum Allowable Rate"), which shall mean the law in effect on the date of this Note, except that if there is a change in such law which results in a higher Maximum Allowable Rate being applicable to this Note, then this Note shall be governed by such amended law from and after its effective date. In the event that fulfillment of any provision of this Note or any of the Security Documents results in the interest rate hereunder being in excess of the Maximum Allowable Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess. If, notwithstanding the foregoing, Payee or any successor Holder receives an amount which under applicable law would cause the interest rate hereunder to exceed the Maximum Allowable Rate, the portion thereof which would be excessive shall automatically be applied to and deemed a prepayment of the unpaid principal balance of this Note and not a payment of interest.

This Note may not be modified or terminated orally.

This Note for all purposes shall be enforced and construed in accordance with the substantive law of the Commonwealth of Massachusetts, without resort to that state's conflict of laws rules.

The provisions of <u>Section 35</u> of the Loan Agreement (entitled "<u>Limitations on Recourse</u>") are incorporated herein by reference.

[Signature Page to Follow]

JOINDER TO SUBSTITUTE PROMISSORY NOTE

Consent to the foregoing Substitute Promissory Note (the "Note") is hereby evidenced by CITIZENS BANK, N.A., a national banking association, the present holder of the Original Note (as defined in the Note). The undersigned hereby acknowledges and agrees that the Note is issued in partial substitution for and replacement of the Original Note; however, it does not constitute a novation thereof.

Witnessed by:

CITIZENS BANK, N.A.

By:____________________
Name: Christopher F. Robie
Title: Senior Vice President

[Signature Page to Substitute Promissory Note (Cambridge Trust Company)]

SUBSTITUTE
PROMISSORY NOTE
(Rockland Trust Company)

$15,326,666.50

Boston, Massachusetts
September 20, 2023

FOR VALUE RECEIVED, WHITE ELEPHANT HOTEL LLC, a Delaware limited liability company having an address c/o New England Development, 75 Park Plaza, 3rd Floor, Boston, Massachusetts 02116 (hereinafter referred to as "Maker" or "Borrower"), promises to pay to the order of ROCKLAND TRUST COMPANY, a Massachusetts trust company having a place of business at 288 Union Street, Rockland, Massachusetts 02370 (hereinafter referred to as "Payee") the principal sum of FIFTEEN MILLION THREE HUNDRED TWENTY-SIX THOUSAND SIX HUNDRED SIXTY-SIX AND 50/100 DOLLARS ($15,326,666.50), payable at the times hereinafter specified, together with interest, in arrears, from the date hereof on the unpaid principal balance from time to time outstanding and on all unpaid installments of interest, as provided in the hereinafter defined Loan Agreement. Reference is made to the Loan Agreement and the Interest Rate Addendum attached thereto for certain definitions used in this Note.

This Note is in partial substitution for that certain Promissory Note of Borrower dated April 5, 2016 payable to the order of Citizens Bank, N.A. ("Citizens") in the original principal amount of $41,160,000, as amended by that certain Benchmark Replacement and Extension Agreement between Borrower and Citizens, dated as of April 5, 2023 (as so amended, the "Original Note"). This Note is issued in partial substitution for and replacement of the Original Note; however, it does not constitute a novation thereof.

After the occurrence of an Event of Default or after Maturity, interest shall accrue hereunder at the Default Rate.

Interest shall be payable on each Interest Payment Date and at the maturity hereof, until repayment in full of this Note, in accordance with the Interest Rate Addendum to the Loan Agreement. Interest only shall be payable through and including October 1, 2025. Thereafter, in addition to installments of interest, Borrower shall also pay to Agent, for the pro rata accounts of each of the Lenders, on each Interest Payment Date commencing November 1, 2025, consecutive monthly installments of principal in reduction of the aggregate unpaid principal balance of the Loan based on a 25-year amortization schedule and the actual Swap Rate then in effect ("Principal Amortization"), with the entire principal balance and all accrued and unpaid interest due and payable in full on the Maturity Date, subject to extension as provided in Section 3 of the Loan Agreement.

The entire principal balance, together with all unpaid interest, fees, expenses and other charges, if not sooner paid, shall in any event be paid in one (1) final installment on September 20, 2028 (the "Maturity Date"), subject to extension as provided in Section 3 of the Loan Agreement.

All sums payable hereunder are payable in lawful money of the United States of America and in immediately available funds to Payee, its successors or assigns (the "Holder"), in accordance with Section 20.14.3 of the Loan Agreement.

All sums paid under this Note prior to maturity or acceleration shall be applied first to any interest, fees, expenses and other charges then due and unpaid, with the remaining balance, if any, to be applied to unpaid principal. Any sums paid or received after maturity or acceleration shall be applied in such manner as the Holder may determine.

Whenever a day on which payment of interest and/or principal required to be made hereunder falls on a Saturday, Sunday or public holiday, such payment shall be due on the next following normal business day, and where time is extended for the payment of principal by virtue of the due date thereof falling on a Saturday, Sunday or public holiday, such extended time shall be included in the computation of interest.

This Note is referred to in a certain Amended and Restated Term Loan Agreement (the "Loan Agreement") dated as of the date hereof between (i) Borrower, (ii) Citizens, as "Agent" and as a "Lender", and (iii) the other "Lenders" now or hereafter party thereto, and is in all respect subject to the provisions thereof. All proceeds of this Note are to be advanced in accordance with the provisions of the Loan Agreement. The Holder is authorized to make, from time to time and based upon the Holder's records, notations on its records as to the date and amount of each payment of principal and interest received by the Holder, the principal balance of this Note, and the date to which interest has been paid. All such notations shall be presumed to be accurate in the absence of manifest error.

This Note is secured, inter alia, by a Mortgage and Security Agreement dated as of April 5, 2016 from Borrower to Citizens, as amended by an Amendment of Mortgage between Borrower and Agent of even date herewith (the "Mortgage"), with respect to certain real estate located at 43, 50, 60 and 64 Easton Street and 4 Willard Street in Nantucket, Massachusetts and more particularly described in the Mortgage (the "Mortgaged Property").

Any capitalized terms used in this Note and not otherwise defined in this Note shall have the same meaning as set forth in the Loan Agreement or, if not defined in the Loan Agreement, as set forth in the Mortgage.

Payee and any successor Holder may assign, transfer or negotiate this Note and any security for the performance of Maker's obligations hereunder, and in such event all the provisions of this Note and the Security Documents shall inure to the benefit of and may be exercised by or on behalf of the successor Holder, and all payments of principal and of interest due and to become due under this Note shall not thereafter be subject to any defense, counterclaim or set-off which Maker may have against any prior Holder.

Upon the occurrence of any Event of Default, this Note, at the option of the Required Lenders, shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Maker. The Required Lenders' failure to exercise such option shall not constitute a waiver of the right to exercise it at any other

time while such Event of Default continues to exist. Irrespective of the exercise or nonexercise of the foregoing option, in the event that any monthly installment of principal and/or interest herein provided for shall become overdue for more than ten (10) days, a "late charge" of five percent (5%) of the overdue installment shall become immediately due and payable to the Agent, for the pro rata benefit of Lenders, as liquidated damages for failure to make prompt payment, and the same shall be secured by the Security Documents.

No renewal or extension granted, or any indulgence shown to, or any release of, or any dealings between the Agent, Lenders or any Holder and any other person, corporation, or entity now or hereafter interested in this Note or in the property securing this Note, whether as owner, encumbrancer, grantor, or otherwise, shall discharge, extend or in any way affect the obligations of Maker hereunder.

Maker shall remain primarily liable on this Note and the Security Documents given to secure the same until full payment, unaffected by any alienation of all or any part of the property securing this Note, by any agreement or transaction between Agent, Lenders or any Holder and any alienee as to payment of principal, interest or other monies, by any forbearance or extension of time, guaranty or assumption by others, or by any other matter, as to all of which notice is hereby waived by Maker.

Maker will pay the legal and other fees and expenses of the Holder reasonably incurred in connection with or incidental to (i) the negotiation and closing of the loan evidenced by this Note, and (ii) the enforcement of any of the obligations of Maker or rights of the Holder under this Note, the Security Documents or any other agreement, document or instrument now or hereafter executed in connection herewith, by litigation or otherwise, after the occurrence of an Event of Default; and all such fees and expenses shall be indebtedness under this Note and shall be secured by the Security Documents.

All provisions of this Note and the Security Documents are expressly subject to the condition that in no event, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Payee hereunder and deemed interest under applicable law exceed the maximum rate of interest on the unpaid principal balance of this Note allowed by applicable law (the "Maximum Allowable Rate"), which shall mean the law in effect on the date of this Note, except that if there is a change in such law which results in a higher Maximum Allowable Rate being applicable to this Note, then this Note shall be governed by such amended law from and after its effective date. In the event that fulfillment of any provision of this Note or any of the Security Documents results in the interest rate hereunder being in excess of the Maximum Allowable Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess. If, notwithstanding the foregoing, Payee or any successor Holder receives an amount which under applicable law would cause the interest rate hereunder to exceed the Maximum Allowable Rate, the portion thereof which would be excessive shall automatically be applied to and deemed a prepayment of the unpaid principal balance of this Note and not a payment of interest.

This Note may not be modified or terminated orally.

This Note for all purposes shall be enforced and construed in accordance with the substantive law of the Commonwealth of Massachusetts, without resort to that state's conflict of laws rules.

The provisions of Section 35 of the Loan Agreement (entitled "Limitations on Recourse") are incorporated herein by reference.

[Signature Page to Follow]

IN WITNESS WHEREOF, Maker has caused this Note to be executed, under seal, by its manager, hereunto duly authorized, as of the date first above written.

Witnessed by:

WHITE ELEPHANT HOTEL LLC

By: NED Manager LLC,
Its Manager

By: Douglass E Karp
Name: Douglass E. Karp
Title: Manager

[Signature Page to Substitute Promissory Note (Rockland Trust Company)]

JOINDER TO SUBSTITUTE PROMISSORY NOTE

Consent to the foregoing Substitute Promissory Note (the "Note") is hereby evidenced by CITIZENS BANK, N.A., a national banking association, the present holder of the Original Note (as defined in the Note). The undersigned hereby acknowledges and agrees that the Note is issued in partial substitution for and replacement of the Original Note; however, it does not constitute a novation thereof.

Witnessed by:

CITIZENS BANK, N.A.

By:____________________
Name: Christopher F. Robie
Title: Senior Vice President

TOWN OF NANTUCKET, MASS. INCORPORATED 1671

Agenda Item Summary

Agenda Item #	II. 2.
Date	11/13/2023

Staff

Amy Baxter, Licensing Administrator

Subject

Liquor License Pledge of License Application – ***Nantucket Island Management, LLC dba The Wauwinet Inn, 120 Wauwinet Road, License #0057-HT-0762***

Executive Summary

Nantucket Island Management, LLC is applying to Pledge of License for a ***Seasonal Hotel All Alcoholic Beverages*** Liquor License for ***DBA The Wauwinet Inn*** at ***120 Wauwinet Road***.

Staff Recommendation

Applicant has met all requirements to file a Pledge of Liquor License. The Licensee is in full compliance with all local and state regulations and has not had any outstanding violations or issues on record.

Requirements for Pledge of Liquor License:

- DOR Certificate of Good Standing
- DUA Certificate of Compliance
- Change of Pledge of License Application
- Vote of the Entity
- Pledge documentation
- Promissory Note

Background/Discussion

In Massachusetts, the holder of a liquor license can pledge his or her license to secure a loan. M.G.L. c. 138, §23. There are several legal requirements a licensee must be aware of, and in compliance with, in order to properly effectuate an enforceable Pledge of their liquor license.

Massachusetts Law states that "any license granted under the provision of this chapter may be pledged for a loan provided approval of such a loan and pledge is given by the local licensing authority and the Commission [ABCC]."

The law permits three different kinds of liquor assets/property to be pledged. These are:

1. Licenses that authorize the sale of alcoholic beverages; 2. Corporate Stock in a corporation that holds a license to sell alcoholic beverages; and 3. Alcoholic beverages themselves which a licensee is authorized to sell.

Impact: Environmental ☐ Fiscal ☐ Community☐ Other☐

N/A

Board/Commission Recommendation

N/A

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

N/A

Attachments

ABCC Pledge of License Application and Supporting Documents; The Wauwinet Inn Liquor License

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission

☐ For Reconsideration

LICENSING AUTHORITY CERTIFICATION

City /Town: Nantucket
ABCC License Number: 00057-HT-0762

TRANSACTION TYPE (Please check all relevant transactions):

The license applicant petitions the Licensing Authorities to approve the following transactions:

- ☐ New License
- ☐ Transfer of License
- ☐ Change of Manager
- ☐ Change of Officers/ Directors/LLC Managers
- ☐ Change of Location
- ☐ Alteration of Licensed Premises
- ☐ Change Corporate Name
- ☐ Change of Ownership Interest (LLC Members/ LLP Partners, Trustees)
- ☐ Change of Class (i.e. Annual / Seasonal)
- ☐ Change of License Type (i.e. club / restaurant)
- ☐ Change of Category (i.e. All Alcohol/Wine, Malt)
- ☐ Issuance/Transfer of Stock/New Stockholder
- ☐ Other
- ☐ Change Corporate Structure (i.e. Corp / LLC)
- ☒ Pledge of Collateral (i.e. License/Stock)
- ☐ Management/Operating Agreement
- ☐ Change of Hours
- ☐ Change of DBA

APPLICANT INFORMATION

Name of Licensee: Nantucket Island Management, LLC
DBA: The Wauwinet Inn
Street Address: 120 Wauwinet Road, Nantucket, MA
Zip Code: 02554
Manager: Jennifer Mandell Hudson
Granted under Special Legislation? Yes ☐ No ☒
If Yes, Chapter
of the Acts of (year)

Type (i.e. restaurant, package store)	Class (Annual or Seasonal)	Category (i.e. Wines and Malts / All Alcohol)
§12 Hotel	Seasonal	All Alcoholic Beverages

DESCRIPTION OF PREMISES Complete description of the licensed premises

First Floor: Bar, Restaurant, Deck, Library, Two Public Rooms, Five Guest Rooms. Second Floor: Fifteen Guestrooms.
Third Floor: Six Guest Rooms. Five Cottages. Storage Shed and Walk-in Cooler.

LOCAL LICENSING AUTHORITY INFORMATION

Application filed with the LLA: Date 10/19/2023 Time
Advertised Yes ☐ No ☒ Date Published Publication
Abutters Notified: Yes ☐ No ☒ Date of Notice

Date APPROVED by LLA 11/13/2023 **Decision of the LLA** **Approves this Application**

Additional remarks or conditions (E.g. Days and hours)

For Transfers ONLY:
Seller License Number: Seller Name:

The Local Licensing Authorities By:

Alcoholic Beverages Control Commission
Ralph Sacramone
Executive Director

BEAUDETTE AND SWAIN
PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
35 OLD SOUTH ROAD, SUITE D
P.O. BOX 2049
NANTUCKET, MASSACHUSETTS 02584

RICHARD P. BEAUDETTE
BRYAN J. SWAIN

PHONE: (508) 228-4455
FAX: (508) 228-3070
WWW.NANTUCKETLAWFIRM.COM

OF COUNSEL
KEVIN F. DALE
WILLIAM F. HUNTER

Thursday, October 19, 2023

VIA HAND DELIVERY

RECEIVED
OCT 19 2023
BY:

Amy C. Baxter
Licensing Administrator
2 Fairgrounds Road
Nantucket, MA 0254
abaxter@police.nantucket-ma.gov

Re: Nantucket Island Management, LLC
d/b/a The Wauwinet Inn
Application to Pledge Collateral
120 Wauwinet Road, Nantucket, MA 02554
License No. 57-HT-0762

Dear Amy:

My office represents Nantucket Island Management, LLC, d/b/a The Wauwinet Inn, in the above-referenced matter. Enclosed, please find a completed application to pledge collateral in connection with The Wauwinet Inn's liquor license, and the following materials related thereto:

1. ABCC Payment Receipt;
2. Monetary Transmittal Form;
3. DOR Certificate of Good Standing;
4. DUA Certificate of Compliance;
5. Change of Pledge of License, Stock or Inventory Application;
6. Vote of the Entity;
7. Pledge documentation;
8. Promissory note, and
9. The local filing fee.

Please let me know if you have any questions. I can be reached by email at rick@nantucketlawfirm.com, or by phone at 508-228-4455.

Sincerely,

Richard P. Beaudette, Esq.

Encl.
CC: Nantucket Island Management, LLC

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION
MONETARY TRANSMITTAL FORM

APPLICATION FOR AMENDMENT-Pledge of Collateral

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.

ECRT CODE: RETA

Please make $200.00 payment here: ABCC PAYMENT WEBSITE

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY) 00057-HT-0762

ENTITY/ LICENSEE NAME Nantucket Island Management LLC DBA The Wauwinet Inn

ADDRESS 120 Wauwinet Road

CITY/TOWN Nantucket **STATE** MA **ZIP CODE** 02554

For the following transactions (Check all that apply):

☐ New License
☐ Transfer of License
☐ Change of Manager
☐ Change of Officers/ Directors/LLC Managers
☐ Change of Location
☐ Alteration of Licensed Premises
☐ Change Corporate Name
☐ Change of Ownership Interest (LLC Members/ LLP Partners, Trustees)
☐ Change of Class (i.e. Annual / Seasonal)
☐ Change of License Type (i.e. club / restaurant)
☐ Change of Category (i.e. All Alcohol/Wine, Malt)
☐ Issuance/Transfer of Stock/New Stockholder
☐ Other
☐ Change Corporate Structure (i.e. Corp / LLC)
☒ Pledge of Collateral (i.e. License/Stock)
☐ Management/Operating Agreement
☐ Change of Hours
☐ Change of DBA

THE LOCAL LICENSING AUTHORITY MUST SUBMIT THIS APPLICATION ONCE APPROVED VIA THE ePLACE PORTAL

Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150-2358

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

APPLICATION FOR AMENDMENT-Pledge of Collateral

☒ **Pledge of License** ☐ **Pledge of Stock** ☐ **Pledge of Inventory**

- Payment Receipt
- Monetary Transmittal Form
- DOR Certificate of Good Standing
- DUA Certificate of Compliance
- Change of Pledge of License, Stock or Inventory Application
- Vote of the Entity
- Pledge documentation
- Promissory note

1. BUSINESS ENTITY INFORMATION

Entity Name	Municipality	ABCC License Number
Nantucket Island Management LLC	Nantucket	00057-HT-0762

Please provide a narrative overview of the transaction(s) being applied for. On-premises applicants should also provide a description of the intended theme or concept of the business operation.

Pledge of liquor license to Citizens Bank, N.A. in connection with refinancing of mortgage loan.

APPLICATION CONTACT

The application contact is the person who should be contacted with any questions regarding this application.

Name	Title	Email	Phone
Richard P. Beaudette, Esq.	Attorney	rick@nantucketlawfirm.com	508-228-4455

2. AMENDMENT-Pledge Information

Pledge of License

Pledge of Inventory

Pledge of Stock

To whom is the pledge being made: Citizens Bank, N.A.

3. FINANCIAL DISCLOSURE

SOURCE OF FINANCING

Please provide signed financing documentation.

Name of Lender	Amount	Type of Financing	Is the lender a licensee pursuant to M.G.L. Ch. 138.
Citizens Bank, N.A.	$7,100,000.00	Mortgage Loan	○ Yes ● No
			○ Yes ● No
			○ Yes ● No
			○ Yes ○ No

FINANCIAL INFORMATION

Provide a detailed explanation of the form(s) and source(s) of funding for the cost identified above.

APPLICANT'S STATEMENT

I, the: ☐ sole proprietor; ☐ partner; ☐ corporate principal; ☒ LLC/LLP manager

Authorized Signatory

of NED Manager LLC, Manager of Applicant

Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

(1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;

(2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;

(3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;

(4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;

(5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;

(6) I understand that all statements and representations made become conditions of the license;

(7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;

(8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and

(9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.

(10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature:

Date: September 22, 2023

Title: Manager

ENTITY VOTE

The Board of Directors or LLC Managers of NED Manager LLC, the sole manager of Applicant
Entity Name

duly voted to apply to the Licensing Authority of Nantucket and the
City/Town

Commonwealth of Massachusetts Alcoholic Beverages Control Commission on September 22, 2023
Date of Meeting

For the following transactions (Check all that apply):

☒ Pledge of License

☐ Pledge of Inventory

☐ Pledge of Stock

☐ Other

"VOTED: To authorize Any one of Douglass E Karp, Stephen R Karp or Steven S. Fischman
Name of Person

to sign the application submitted and to execute on the Entity's behalf, any necessary papers and do all things required to have the application granted."

A true copy attest,

Douglass E Karp
Corporate Officer /LLC Manager Signature

DOUGLASS E. KARP
(Print Name)

For Corporations ONLY
A true copy attest,

Corporation Clerk's Signature

(Print Name)

Bryan Swain

From:	customerservice@nCourt.com
Sent:	Tuesday, October 3, 2023 8:40 AM
To:	Landry, Kathy
Subject:	Receipt from nCourt

YOUR RECEIPT >>

Please include the payment receipt with your application. Thank you.

Paid To

Name: Massachusetts Alcoholic Beverages Control Commission - Retail
Address 1: 95 Fourth Street, Suite 3
City: Chelsea
State: Massachusetts
Zip: 02150

Payment On Behalf Of

First Name: Kathy
Last Name: Landry
Address 1: 75 Park Plaza
City: Boston
State/Territory: MA
Zip: 02116
Phone: (617) 243-7439

Description	ID	Service Fee	Amount
FILING FEES-RETAIL	00057-HT-0762	$4.70	$200.00

Total Amount Paid: **$204.70**

Receipt Date: 10/3/2023 8:39:47 AM EDT
Invoice Number: eec12b4f-3090-4397-a045-3428cc4285f5

Billing Information

First Name: Stephen
Last Name: Karp
Address 1: 75 Park Plaza
City: Boston
State/Territory: MA
Zip: 02116
Email: klandry@nedevelopment.com

Credit / Debit Card Information

Card Type: Visa
Card Number: ************5685

IMPORTANT INFORMATION >>

Please include the payment receipt with your application. Thank you.

Please verify the information shown above. Your payment has been submitted to the location listed above.

Commonwealth of Massachusetts
Department of Revenue
Geoffrey E. Snyder, Commissioner

mass.gov/dor

Letter ID: L1736203040
Notice Date: October 16, 2023
Case ID: 0-002-215-738

CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE

NANTUCKET ISLAND MANAGEMENT LLC
PO BOX 2580
NANTUCKET MA 02584-2580

Why did I receive this notice?

The Commissioner of Revenue certifies that, as of the date of this certificate, NANTUCKET ISLAND MANAGEMENT LLC is in compliance with its tax obligations under Chapter 62C of the Massachusetts General Laws.

This certificate doesn't certify that the taxpayer is compliant in taxes such as unemployment insurance administered by agencies other than the Department of Revenue, or taxes under any other provisions of law.

This is not a waiver of lien issued under Chapter 62C, section 52 of the Massachusetts General Laws.

What if I have questions?

If you have questions, call us at (617) 887-6400 or toll-free in Massachusetts at (800) 392-6089, Monday through Friday, 9:00 a.m. to 4:00 p.m..

Visit us online!

Visit mass.gov/dor to learn more about Massachusetts tax laws and DOR policies and procedures, including your Taxpayer Bill of Rights, and MassTaxConnect for easy access to your account:

- Review or update your account
- Contact us using e-message
- Sign up for e-billing to save paper
- Make payments or set up autopay

Edward W. Coyle Jr

Edward W. Coyle, Jr., Chief
Collections Bureau

Department of Unemployment Assistance
Commonwealth of Massachusetts
Executive Office of Labor & Workforce Development

Certificate of Compliance

Date: October 4, 2023
Letter ID: L0000001382
Employer ID (FEIN): XX-XXX6262

NANTUCKET ISLAND MANAGEMENT LLC
PO BOX 2580
NANTUCKET MA 02584-2580

Certificate ID: L0000001382

The Department of Unemployment Assistance certifies that as of 03-Oct-2023, NANTUCKET ISLAND MANAGEMENT LLC is current in all its obligations relating to contributions, payments in lieu of contributions, and the employer medical assistance contribution established in G.L.c.149,§189.

This certificate expires in 30 days from the date of issuance.

Sincerely,

Katie Dishnica

Katie Dishnica, Director
Department of Unemployment Assistance

Questions?
Revenue Enforcement Unit
Department of Unemployment Assistance
Email us: Revenue.Enforcement@detma.org
Call us: (617) 626-5750

Department of Unemployment Assistance
Commonwealth of Massachusetts
Executive Office of Labor & Workforce Development

IMPORTANT NOTICE

This document contains important information. Please have it translated immediately.

В данном документе содержится важная информация. Вам необходимо срочно сделать перевод документа.

Este documento contiene información importante. Por favor, consiga una traducción inmediatamente.

Docikman sa gen enfòmasyon enpòtan. Tanpri fè yon moun tradwi l touswit.

Questo documento contiene informazioni importanti. La preghiamo di tradurlo inmediatamente.

Este documento contém informações importantes. Por favor, traduzi-lo imediatamente.

此文件含有重要信息。請立即找人翻譯。

본 문서에는 중요한 정보가 포함되어 있습니다. 본 문서를 즉시 번역하도록 하십시오.

Tai liêụ naỳ co´chưá thông tin quan troṇg. Vui loǹg dịch tai liêụ naỳ ngay.

ເອກະສານສະບັບນີ້ມີຂໍ້ມູນສຳຄັນ. ກະລຸນານຳເອກະສານສະບັບໄປແປທັນທີ.

ឯកសារនេះមានព័ត៌មានសំខាន់។ សូមបកប្រែវាយ៉ាងឆាប់រហ័ស។

Ce document contient des informations importantes. Veuillez le faire traduire au plus tôt.

MANAGER'S CERTIFICATE

The undersigned, NED Manager LLC, a Delaware limited liability company (the "Company"), manager of Nantucket Island Management LLC, a Massachusetts limited liability company ("NIM") hereby certifies as follows:.

1. The Company is the duly appointed, qualified and sole manager of NIM;

2. As of the date hereof, Stephen R. Karp, Steven S. Fischman and Douglass E. Karp are all of the members of the Board of Managers of the Company; and

2. Attached to this certificate as Exhibit A is a complete and correct copy of actions adopted by all members of the Board of Managers of the Company, which actions were duly adopted, have not been repealed or amended, and remain in full force and effect as of the date hereof.

IN WITNESS WHEREOF, this certificate is executed as of the 22nd day of September, 2023.

NED MANAGER LLC

By: Douglass E Karp
Name: Douglass E. Karp
Title: Manager

Exhibit A

NED MANAGER LLC

Action of Board of Managers

As of September 22, 2023

WHEREAS: The undersigned, being all of the managers constituting the Board of Managers of NED Manager LLC, a Delaware limited liability company (the "Company"), as manager of Nantucket Island Management LLC, a Massachusetts limited liability company ("NIM"), desire NIM to execute certain documents in connection with a pledge of that certain Innholder All Alcoholic Beverages License No. 00057-HT-0762 held by NIM d/b/a The Wauwinet Inn (the "Pledge of License") to Citizens Bank, N.A. (the "Lender") in connection with a loan from the Lender to Wauwinet Inn LLC in the original principal amount of $8,700,000, to be secured by a first mortgage on that certain real property and the improvements thereon commonly known as the Wauwinet Inn, located at 115-120 Wauwinet Road in Nantucket, Nantucket County, Massachusetts (the "Premises");

WHEREAS: The Company is the sole manager of NIM;

NOW THEREFORE, it is

RESOLVED: That the Company, as the sole manager of NIM, hereby authorizes NIM to execute and deliver any documents, certificates, authorizations, directions, or other writings on behalf of NIM as may be required with respect to the Pledge of License, as well as such other documents, instruments and agreements evidencing or in any way relating to the Pledge of License as any manager may deem to be necessary or desirable; and

RESOLVED: That each of Stephen R. Karp, Steven S. Fischman and Douglass E. Karp, the managers of the Company, acting in its capacity as the sole manager of NIM, is authorized, acting singly, to execute, acknowledge and deliver the petition for Pledge of License (with such changes, modifications, and alterations thereto as such manager in his sole discretion may deem necessary, proper or advisable) for and on behalf of the Company in its capacity as Manager of NIM, and to take, or cause to be taken, any and all further steps and actions and to execute, file and deliver any and all other agreements, documents, certificates and instruments as they (or any one of them) deem necessary, proper or advisable to carry out fully the intent and accomplish the purposes of the foregoing resolutions; and the taking of any such further actions and/or the execution, filing and/or delivery of any such agreements, documents, certificates and instruments by any such manager, acting singly, shall constitute conclusive evidence of the authority of such manager to do so and that the same was deemed necessary, proper or advisable and was approved, authorized and adopted hereby.

RESOLVED: This Action of the Board of Directors may be executed in counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument and that this instrument may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation of the foregoing, "electronic signature" shall include faxed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, and any execution by DocuSign.

Executed as of the date set forth above.

BOARD OF MANAGERS OF
NED MANAGER LLC

DocuSigned by:
By: Stephen R. Karp
2BD35BCA85474E3...
Name: Stephen R. Karp
Title: Manager

DocuSigned by:
By: Steven S. Fischman
7E10E5928C5A464...
Name: Steven S. Fischman
Title: Manager

DocuSigned by:
By: Douglass E. Karp
5F6B2242274748E...
Name: Douglass E. Karp
Title: Manager

PLEDGE AGREEMENT REGARDING LIQUOR LICENSE

[ATTACHED]

PLEDGE AGREEMENT REGARDING LIQUOR LICENSE

This Pledge Agreement (this "**Agreement**") is made as of September 22, 2023, by NANTUCKET ISLAND MANAGEMENT LLC, a Massachusetts limited liability company, having an office located at c/o New England Development, 75 Park Plaza, Third Floor, Boston, Massachusetts 02116 ("**Pledgor**"), to Citizens Bank, N.A., a national banking association having a place of business at 28 State Street, Boston, MA 02109 ("**Pledgee**").

RECITALS

A. Wauwinet Inn LLC, a Delaware limited liability company ("**Wauwinet**"), is the owner of that certain real property and the improvements thereon commonly known as the Wauwinet Inn, located at 115 and 120 Wauwinet Road, Nantucket, Nantucket County, Massachusetts (the "**Hotel**" and the "**Licensed Premises**").

B. Pursuant to the terms of that certain Management Agreement dated as of January 1, 1999, as affected by that certain Partial Termination of Management Agreement dated December 17, 2007, and as amended by that certain First Amendment of Management Agreement dated as of November 11, 2010 and that certain Second Amendment of Management Agreement dated as of September 7, 2023 (the "**Management Agreement**"), Pledgor has agreed to perform management services as agent of and for the account of Wauwinet with respect to the Hotel.

C. Wauwinet has entered into that certain Term Loan Agreement with Pledgee, as amended, pursuant to which Pledgee has agreed to make a loan (the "**Loan**") to Wauwinet in the original principal amount of $8,700,000 (the "**Loan Agreement**"). The Loan is evidenced by that certain Promissory Note made by Wauwinet to the order of Lender in the original principal amount of $8,700,000 (as amended from time to time, the "**Note**").

D. Pledgor has entered into that certain Tri-Party Agreement dated as of April 5, 2016, pursuant to which Pledgor has agreed to grant to Pledgee a security interest in any and all licenses obtained by Pledgor with respect to the operation of the Hotel.

E. Pledgor holds that certain Innholder/All Alcoholic Beverages License No. 00057-HT-0762, a copy of which is attached hereto as Exhibit A (the "**Existing License**") with respect to the Licensed Premises, and has filed an application with the Nantucket Board of Selectmen and the Commonwealth of Massachusetts Alcoholic Beverages Control Commission (collectively, the "**Licensing Authorities**") for and a pledge of the Liquor License to Pledgee.

F. To induce Pledgee to enter into the Loan Agreement, disburse funds in accordance with the Loan Agreement, and execute all other documents in connection therewith, Pledgor hereby agrees to pledge, upon approval and issuance by the Licensing Authorities, and to the extent permitted by law, the Existing License and any future alcoholic beverages licenses obtained by Pledgor with respect to the Licensed Premises, as such licenses may be renewed, altered or amended from time to time (collectively, the "**Liquor License**"), as collateral security for the Loan. Capitalized terms not defined herein shall have the meanings ascribed to them in the Loan Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Pledgor and Pledgee hereby agree as follows:

1. Pledge. Pledgor hereby pledges to Pledgee and grants to Pledgee a security interest in the Liquor License, upon approval of same by the Licensing Authorities, and to the extent permitted by law, as collateral security for the payment and performance by Pledgor of its obligations under the Note, the Loan Agreement and the other Loan Documents.

2. Agreements, Representations and Warranties. Pledgor agrees, warrants and represents as follows:

(a) Pledgor represents and warrants that it is the lawful owner of record of the Liquor License, free and clear of all liens and encumbrances (other than the security interest granted to Pledgee).

(b) Pledgor shall not sell, assign, transfer, pledge or otherwise encumber the Liquor License or any interest therein, except as permitted under the Loan Agreement, without the consent of Pledgee.

(c) To the best of Pledgor's knowledge, Pledgor is in compliance with, and Pledgor shall comply with, in all material respects, all applicable laws and regulations applying to the sale of alcoholic beverages and shall take all action reasonably necessary or desirable to preserve and maintain its rights under the Liquor License and keep the Liquor License in full force and effect.

(d) Pledgor shall promptly give Pledgee written notice of the commencement of any legal or administrative proceedings to suspend or revoke the Liquor License.

(e) Subject to any right to contest the same pursuant to the Loan Agreement, Pledgor has paid, and agrees to pay, when due all amounts that may be owed, or become owed, to the Commonwealth of Massachusetts as taxes or otherwise or owed specifically to the Massachusetts Department of Revenue.

(f) Pledgor has paid, and agrees to pay when due, all amounts due and owing to alcoholic beverage creditors, including wholesalers, of Pledgor.

(g) Pledgor is a validly created lawful entity under Massachusetts law, is authorized to enter into this Agreement, and is in good standing under the limited liability company laws of the Commonwealth of Massachusetts.

(h) Pledgor agrees to execute and deliver to Pledgee, at any time during which this Agreement shall be in effect, and to the extent permitted by applicable law, such further instruments as Pledgee may deem reasonably necessary to make effective this Agreement and the covenants of Pledgor contained herein.

3. Rights Upon Event of Default. Upon the occurrence and continuation of an Event of Default continuing beyond any applicable notice and cure period, as defined herein, Pledgee,

at its option and without further notice to Pledgor, shall have the right to do one more of the following:

(a) immediately seek to have the Licensing Authorities approve the transfer of the Liquor License into the name of Pledgee or its nominee;

(b) sell or otherwise dispose of the Liquor License at public or private sale upon the giving of not less than ten (10) days notice prior to such sale and apply the proceeds thereof in accordance with this Agreement (it being understood and agreed that any such sale or disposition is subject to the approval of the Licensing Authorities); or

(c) pursue any right or remedy of a secured party under the Uniform Commercial Code.

Pledgor hereby irrevocably appoints Pledgee its attorney-in-fact for purposes of executing and delivering any instrument or document necessary or desirable for the exercise of any of the foregoing rights.

Pledgor will not hinder, delay, or interfere with Pledgee's exercise of any of the foregoing rights.

4. Event of Default. The occurrence of any of the following events shall constitute an Event of Default hereunder:

(a) a breach by Pledgor of any agreement, warranty, representation or covenant contained herein, including, but not limited to, any or all of the provisions of Section 2 above, which breach is not cured by Pledgor within thirty (30) days after Pledgor obtains knowledge of such breach;

(b) the suspension (for thirty (30) days or more) or revocation of the Liquor License; or

(c) any Event of Default under the Note, the Loan Agreement or any of the other Loan Documents.

5. Application of Proceeds. Pledgee in its sole discretion may apply any and all proceeds obtained by Pledgee upon the realization of its security interest in the Liquor License, however arising, and other amounts collected or received in the exercise of its rights hereunder to any and all obligations of Pledgor to Pledgee, whether or not then due, and may exercise said rights without regard to the existence of any other security for any obligation. All monies that Pledgee shall receive in accordance with the provisions hereof, whether by transfer or sale of the Liquor License or otherwise, shall be applied in the following manner: first, to the payment of all costs and expenses incurred in connection with the administration and enforcement of or the preservation of any rights under this Agreement or any of the reasonable expenses and disbursements of Pledgee (including, without limitation, the reasonable fees and disbursements of its counsel and agents) and, second, to the payment of any and all obligations of Pledgor to Pledgee.

6. <u>No Obligation upon Pledgee</u>. Unless and until Pledgee exercises its right hereunder and the Liquor License is transferred into the name of Pledgee or its nominee, nothing contained herein shall operate or be construed to obligate Pledgee to perform any of the terms, covenants or conditions contained in the Liquor License, or to impose any obligation upon Pledgee with respect to the Liquor License, or to place upon Pledgee any responsibility for the operation, control, care, management or repair of the Licensed Premises or for the payment, performance or observance of any obligation, requirement or condition under the Liquor License. The execution of this Agreement by Pledgor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Licensed Premises as well as the payment, performance or observance of any obligation, requirement or condition under the Liquor License is and shall be that of Pledgor except as set forth above.

7. <u>No Waiver</u>. The failure of Pledgee to avail itself of any of the terms, covenants and conditions of this Agreement for any period of time, or at any time or times shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of Pledgee under this Agreement are cumulative, are not in lieu of, and are in addition to any other rights and remedies which Pledgee shall have under or by virtue of the Note, the Loan Agreement and the other Loan Documents. The rights and remedies of Pledgee hereunder may be exercised from time to time and as often as such exercise is deemed expedient by Pledgee.

8. <u>Assignment by Pledgee</u>. To the extent permissible under applicable law, including, without limitation, the approval of the Licensing Authorities as necessary, Pledgee shall have the right to assign to any party including, without limitation, any subsequent holder of the Note or other Loan Documents or to any person acquiring title to the Licensed Premises, all of Pledgee's right, title, interest, power and authority with respect to the Liquor License vested in Pledgee by virtue of this Agreement or hereafter assigned to Pledgee.

9. <u>No Change to Liquor License</u>. Pledgor further covenants that, without the prior written consent of Pledgee, which shall not be unreasonably conditioned or delayed, Pledgor shall not cancel, abridge or substantially modify any of the terms, covenants and conditions of the Liquor License. Pledgor further agrees that, upon demand by Pledgee during the term of the Loan, Pledgor shall enter into any agreements, in substantially similar form to this Agreement, with Pledgee with respect to any agreement and/or license hereafter executed by Pledgor relating to the management and operation of the sale of alcoholic beverages at the Licensed Premises.

10. <u>No Modification of this Agreement</u>. No change, amendment, modification, cancellation or discharge hereof or of any part hereof shall be valid unless Pledgor and Pledgee shall have consented thereto in writing.

11. <u>Conflicting Provisions</u>. In the event of any conflict between the terms and provisions of the Loan Agreement and the terms and provisions of this Agreement, the terms and provisions of the Loan Agreement shall prevail. If any provisions of this Agreement or portion of such provision or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement (or in the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

12. Notices. All notices given to Pledgor or to Pledgee pursuant to this Agreement must be in writing and shall be deemed to have been properly given or served by personal delivery or by sending same by overnight courier or by depositing same in the United States mail, postpaid and registered or certified, return receipt requested, in each case addressed as follows with an additional copy sent concurrently by email:

If to the Pledgee:

Citizens Bank, N.A.
28 State Street
Boston, MA 02109
Attn: Christopher F. Robie, Senior Vice President
Commercial Real Estate
Email: christopher.robie@citizensbank.com

with a copy to:

Hinckley, Allen & Snyder, LLP
28 State Street
Boston, Massachusetts 02109
Attn: Scott E. Cooper, Esq.
Email: scooper@hinckleyallen.com

If to the Pledgor:

c/o New England Development
75 Park Plaza, 3rd Floor
Boston, Massachusetts 02116
Attn: Kenneth A. Leibowitz
Email: kleibowitz@nedevelopment.com

with a copy to (if prior to May 1, 2024):

Goulston & Storrs, PC
400 Atlantic Avenue
Boston, MA 02110
Attn: Phillip G. Levy, Esquire
Email: plevy@goulstonstorrs.com

with a copy to (if May 1, 2024 or after):

Goulston & Storrs, PC
One Post Office Square
Boston, MA 02109
Attn: Phillip G. Levy, Esquire
Email: plevy@goulstonstorrs.com

13. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Pledgor, its successors and assigns, and Pledgee, its successors and assigns, and shall be governed by and in accordance with the laws of the Commonwealth of Massachusetts.

[Signature page follows]

[Signature page to Pledge Agreement regarding Liquor License – Wauwinet Inn]

EXECUTED under seal as of the day and year first above written.

PLEDGOR:

NANTUCKET ISLAND MANAGEMENT LLC, a
Massachusetts limited liability company

By: NED Manager LLC,
a Delaware limited liability company,
its Manager

By: Douglass E Karp
Name: Douglass E. Karp
Title: Manager

Exhibit A

Innholder/All Alcoholic Beverages License No. 00057-HT-0762

[Attached]

LICENSE #: 00057-HT-0762 **LICENSE FEE: $3,900.00**

THE LICENSING BOARD *for the* TOWN OF NANTUCKET, MASSACHUSETTS

HEREBY GRANTS AN

SEASONAL RETAIL INNHOLDER LICENSE

TO EXPOSE, KEEP FOR SALE, AND TO SELL

ALL ALCOHOLIC BEVERAGES

TO BE CONSUMED ON THE PREMISES

BUSINESS: **Nantucket Island Management, LLC**
DBA: **THE WAUWINET INN**
PREMISES: **120 Wauwinet Rd.**
Nantucket, MA 02584
MANAGER: **Jennifer Mandell Hudson**

ON PREMISES DESCRIBED AS:
First Floor: Bar, Restaurant, Deck, Library, Two Public Rooms, Five Guest Rooms.
Second Floor: Fifteen Guestrooms.
Third Floor: Six Guest Rooms.
Five Cottages.
Storage Shed and Walk-in Cooler.

The hours during which alcoholic beverages may be sold: In accordance with MGL Chapter 138 and amendments thereto with the local provision that patrons shall not be served alcoholic beverages before 8:00AM Monday through Saturday and 11:00AM on Sunday. **No alcohol service is permitted after 1:00AM** and patrons must be off the license premises and said **premises must be closed by 1:30AM**. Any restrictions apply as are on file with the local licensing authority. In accordance with Article 40 ATM 2001, Chapter 86.1 Board of Health Regulations Prohibit Smoking in Certain Places within the Town of Nantucket.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the Massachusetts General Laws, as amended and any rules or regulations made thereunder by the licensing authorities, including, but not limited to Chapter 250 of the Town of Nantucket Rules and Regulations Governing Alcoholic Beverages.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signature

Chair, Select Board

THIS LICENSE IS VALID APRIL 1, 2023 – JANUARY 15, 2024

**Unless earlier suspended, cancelled, or revoked*

FINANCING DOCUMENTS

[ATTACHED]

PROMISSORY NOTE

$8,700,000

Boston, Massachusetts
April 5, 2016

FOR VALUE RECEIVED, WAUWINET INN LLC, a Delaware limited liability company having an address c/o New England Development, 75 Park Plaza, Boston, Massachusetts 02116 (hereinafter referred to as "Maker" or "Borrower"), promises to pay to the order of CITIZENS BANK, NATIONAL ASSOCIATION, a national banking association having a place of business at 28 State Street, Boston, Massachusetts 02109 (hereinafter referred to as "Payee" or "Bank"), the principal sum of EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS ($8,700,000), payable at the times hereinafter specified, together with interest, in arrears, from the date hereof on the unpaid principal balance from time to time outstanding and on all unpaid installments of interest, as hereinafter provided in the Addendum attached hereto as Exhibit "A" and made a part hereof (the "Addendum"). Reference is made to the Addendum for certain definitions used in this Note.

All interest payable hereunder shall be computed on the basis of the actual number of days elapsed using a three hundred sixty (360) day year.

After the occurrence of an Event of Default or after Maturity, interest shall accrue hereunder at the Default Rate.

Interest shall be payable on each Interest Payment Date and at the maturity hereof, until repayment in full of this Note. In addition to installments of interest, monthly installments of principal shall also be payable on each Interest Payment Date in accordance with the principal amortization schedule attached hereto as Exhibit "B" and made a part hereof (the "Principal Amortization Schedule"). Lender reserves the right to adjust the Principal Amortization Schedule based on the actual Swap Rate in effect at such time as Borrower enters into a Hedging Contract.

The entire principal balance, together with all unpaid interest, fees, expenses and other charges, if not sooner paid, shall in any event be paid in one (1) final installment on April 5, 2023 (the "Maturity Date").

All sums payable hereunder are payable in lawful money of the United States of America and in immediately available funds at the above stated office of Payee or such other place or places as Payee, its successors or assigns (the "Holder") may designate in writing.

All sums paid under this Note prior to maturity or acceleration shall be applied first to any interest, fees, expenses and other charges then due and unpaid, in such order as the Holder shall determine, with the remaining balance, if any, to be applied to unpaid principal. Any sums paid or received after maturity or acceleration shall be applied in such manner as the Holder may determine.

Whenever a day on which payment of interest and/or principal required to be made hereunder falls on a Saturday, Sunday or public holiday, such payment shall be due on the next following normal business day, and where time is extended for the payment of principal by virtue of the due date thereof falling on a Saturday, Sunday or public holiday, such extended time shall be included in the computation of interest.

This Note is referred to in a certain Term Loan Agreement (the "Loan Agreement") between Maker and Payee of even date herewith and is in all respect subject to the provisions thereof. All proceeds of this Note are to be advanced in accordance with the provisions of the Loan Agreement. The Holder is authorized to make, from time to time and based upon the Holder's records, notations on its records as to the date and amount of each payment of principal and interest received by the Holder, the principal balance of this Note, and the date to which interest has been paid. All such notations shall be presumed to be accurate in the absence of manifest error.

This Note is secured, inter alia, by a Mortgage and Security Agreement from Borrower to Payee of even date (the "Mortgage") with respect to certain real estate located at 115 and 120 Wauwinet Road in Nantucket, Massachusetts and more particularly described in the Mortgage (the "Mortgaged Property").

Any capitalized terms used in this Note and not otherwise defined in this Note shall have the same meaning as set forth in the Loan Agreement or, if not defined in the Loan Agreement, as set forth in the Mortgage.

Payee and any successor Holder may assign, transfer or negotiate this Note and any security for the performance of Maker's obligations hereunder, and in such event all the provisions of this Note and the Security Documents shall inure to the benefit of and may be exercised by or on behalf of the successor Holder, and all payments of principal and of interest due and to become due under this Note shall not thereafter be subject to any defense, counterclaim or set-off which Maker may have against any prior Holder.

Upon the occurrence of any Event of Default, this Note, at the option of the Holder, shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Maker and by every Other Liable Party. The Holder's failure to exercise such option shall not constitute a waiver of the right to exercise it at any other time. Irrespective of the exercise or nonexercise of the foregoing option, in the event that any monthly installment of principal and/or interest herein provided for shall become overdue for more than ten (10) days, a "late charge" of five percent (5%) of the overdue installment shall become immediately due and payable to the Holder as liquidated damages for failure to make prompt payment, and the same shall be secured by the Security Documents.

No renewal or extension granted, or any indulgence shown to, or any release of, or any dealings between the Holder and any other person, corporation, or entity now or hereafter interested in this Note or in the property securing this Note, whether as owner, encumbrancer, grantor, or otherwise, shall discharge, extend or in any way affect the obligations of Maker or any Other Liable Party hereunder.

Maker shall remain primarily liable on this Note and the Security Documents given to secure the same until full payment, unaffected by any alienation of all or any part of the property securing this Note, by any agreement or transaction between any Holder and any alienee as to payment of principal, interest or other monies, by any forbearance or extension of time, guaranty or assumption by others, or by any other matter, as to all of which notice is hereby waived by Maker.

Maker will pay the legal and other fees and expenses of the Holder reasonably incurred in connection with or incidental to (i) the negotiation and closing of the loan evidenced by this Note, and (ii) the enforcement of any of the obligations of Maker or rights of the Holder under this Note, the Security Documents or any other agreement, document or instrument now or hereafter executed in connection herewith, by litigation or otherwise, after the occurrence of an Event of Default; and all such fees and expenses shall be indebtedness under this Note and shall be secured by the Security Documents.

All provisions of this Note and the Security Documents are expressly subject to the condition that in no event, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Payee hereunder and deemed interest under applicable law exceed the maximum rate of interest on the unpaid principal balance of this Note allowed by applicable law (the "<u>Maximum Allowable Rate</u>"), which shall mean the law in effect on the date of this Note, except that if there is a change in such law which results in a higher Maximum Allowable Rate being applicable to this Note, then this Note shall be governed by such amended law from and after its effective date. In the event that fulfillment of any provision of this Note or any of the Security Documents results in the interest rate hereunder being in excess of the Maximum Allowable Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess. If, notwithstanding the foregoing, Payee or any successor Holder receives an amount which under applicable law would cause the interest rate hereunder to exceed the Maximum Allowable Rate, the portion thereof which would be excessive shall automatically be applied to and deemed a prepayment of the unpaid principal balance of this Note and not a payment of interest.

This Note may not be modified or terminated orally.

This Note for all purposes shall be enforced and construed in accordance with the substantive law of the Commonwealth of Massachusetts, without resort to that state's conflict of laws rules.

The provisions of Section 34 of the Loan Agreement (entitled "Limitations on Recourse") are incorporated herein by reference.

IN WITNESS WHEREOF, Maker has caused this Note to be executed, under seal, by its manager, hereunto duly authorized, as of the date first above written.

Witnessed by:

WAUWINET INN LLC, a Delaware limited liability company

By: NED Manager LLC, a Delaware limited liability company, its Manager

By: Douglass E Karp
Name: DOUGLASS KARP
Title: Manager

Exhibit A

LIBOR Addendum

1. Certain Definitions. All capitalized terms used herein and not otherwise defined below shall have the same meaning as set forth in the Note or, if not defined in the Note, as set forth in the Loan Agreement.

"Adjusted LIBOR Rate" means, relative to a LIBOR Rate Loan for any LIBOR Interest Period, a rate per annum determined by dividing (x) the LIBOR Rate for such LIBOR Interest Period by (y) a percentage equal to one hundred percent (100%) minus the LIBOR Reserve Percentage.

"Business Day" means:

(a) any day which is neither a Saturday or Sunday nor a legal holiday on which commercial banks are authorized or required to be closed in Boston, Massachusetts;

(b) when such term is used to describe a day on which a borrowing, payment, prepayment or repayment is to be made in respect of any LIBOR Rate Loan, any day which is: (i) neither a Saturday or Sunday nor a legal holiday on which commercial banks are authorized or required to be closed in New York City; and (ii) a London Banking Day; and

(c) when such term is used to describe a day on which an interest rate determination is to be made in respect of any LIBOR Rate Loan, any day which is a London Banking Day.

"Default Rate" means (i) prior to the Maturity Date, a rate per annum equal to four percent (4.00%) in excess of the interest rate then in effect and (ii) after the Maturity Date, a rate per annum equal to four percent (4.00%) in excess of the Prime Rate.

"Hedging Contracts" means, interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, or any other agreements or arrangements entered into between the Borrower and the Bank and designed to protect the Borrower against fluctuations in interest rates or currency exchange rates.

"Hedging Obligations" means, with respect to the Borrower, all liabilities of the Borrower to the Bank under Hedging Contracts.

"Interest Payment Date" means the first Business Day of each calendar month commencing May 1, 2016.

"LIBOR Interest Period" means, relative to any LIBOR Rate Loan:

(i) initially, the period beginning on (and including) the date on which the Bank shall advance the proceeds of this Note to or on behalf of Borrower and ending on (but excluding) May 1, 2016 (the "Stub Period"); and

(ii) then, the period commencing on (and including) the last day of the Stub Period and ending on (but excluding) the day which numerically corresponds to such date one month thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month); and

(iii) thereafter, each period commencing on the last day of the next preceding LIBOR Interest Period applicable to such LIBOR Rate Loan and ending one (1) month thereafter;

provided, however, that

(a) if the Borrower has or may incur Hedging Obligations with the Bank in connection with the Loan, the LIBOR Interest Period shall be of the same duration as the relevant period set under the applicable Hedging Contract;

(b) if such LIBOR Interest Period would otherwise end on a day which is not a Business Day, such LIBOR Interest Period shall end on the next following Business Day unless such day falls in the next calendar month, in which case such LIBOR Interest Period shall end on the first preceding Business Day; and

(c) no LIBOR Interest Period may end later than the Maturity Date.

"LIBOR Rate" means, relative to any LIBOR Interest Period, the offered rate for deposits of U.S. Dollars in an amount approximately equal to the amount of the requested LIBOR Rate Loan for a term coextensive with the designated LIBOR Interest Period which the ICE Benchmark Administration (or any successor administrator of LIBOR rates) fixes as its LIBOR rate as of 11:00 a.m. London time on the day which is two London Banking Days prior to the beginning of such LIBOR Interest Period. If such day is not a London Banking Day, the LIBOR Rate shall be determined on the next preceding day which is a London Banking Day. If for any reason the Bank cannot determine such offered rate by the then current administrator of LIBOR rates, the Bank may, in its sole but reasonable discretion, use an alternative method to select a rate calculated by the Bank to reflect its cost of funds. If the LIBOR Rate as determined above with respect to any LIBOR Interest Period would be less than zero percent (0%), then the LIBOR Rate for such Interest Period shall be deemed to be zero percent (0%).

"LIBOR Rate Loan" means the Loan for the period(s) when the rate of interest applicable to the Loan is calculated by reference to the LIBOR Rate in the manner set forth herein.

"LIBOR Rate Margin" means two and one-quarter percent (2.25%).

"LIBOR Reserve Percentage" means, relative to any day of any LIBOR Interest Period, the maximum aggregate (without duplication) of the rates (expressed as a decimal fraction) of reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) under any regulations of the Board of Governors of the Federal Reserve System (the "Board") or other governmental authority having jurisdiction with respect thereto as issued from time to time and then applicable to assets or liabilities consisting of "Eurocurrency Liabilities", as currently defined in Regulation D of the Board, having a term approximately equal or comparable to such LIBOR Interest Period.

"Loan" means the loan evidenced by the Note.

"London Banking Day" means a day on which dealings in US dollars deposits are transacted in the London interbank market.

"Maturity Date" or "Maturity" means April 5, 2023, unless accelerated sooner pursuant to the terms hereof.

"Note" means that certain Promissory Note dated April 5, 2016 in the original principal amount of $8,700,000 made payable by the Borrower to the order, and for the benefit, of the Bank.

"Prime Rate" shall mean a rate per annum equal to the rate of interest announced by Bank in Boston, Massachusetts from time to time as its "Prime Rate." Any change in the Prime Rate shall be effective immediately from and after such change in the Prime Rate. Interest accruing by reference to the Prime Rate shall be calculated on the basis of actual days elapsed and a 360-day year. The Borrower acknowledges that the Bank may make loans to its customers above, at or below the Prime Rate.

"Prime Rate Loan" means any loan for the period(s) when the rate of interest applicable to such Loan is calculated by reference to the Prime Rate.

"Prime Rate Margin" 0% per annum.

"Principal Repayment Amount" means the regularly scheduled reductions in the outstanding principal of the Loan to be made on each Interest Payment Date, as set forth in the Principal Amortization Schedule.

2. [Intentionally Omitted].

3. Repayments, Prepayments and Interest.

3.1 LIBOR Rate Loan; Automatic Rollover. Unless otherwise prohibited by this Agreement, the Loan shall be classified as LIBOR Rate Loan at all times, subject to the limitations set forth herein. Upon the expiration of a LIBOR Interest Period, the LIBOR Rate Loan shall automatically be continued as a LIBOR Rate Loan at the then applicable Adjusted LIBOR Rate and in an amount equal to the principal amount of the expiring LIBOR Rate Loan less any Principal Repayment Amount made by Borrower; provided, however, that no portion of the outstanding principal amount of a LIBOR Rate Loan may be continued as a LIBOR Rate Loan when any Event of Default has occurred and is continuing. If any Event of Default has occurred and is continuing (if the Bank does not otherwise elect to exercise any right to accelerate the Loan hereunder), the LIBOR Rate Loan shall automatically be continued as a Prime Rate Loan on the first day of the next Interest Period.

3.2 Voluntary Prepayment of LIBOR Rate Loans. LIBOR Rate Loans may be prepaid upon the terms and conditions set forth herein. For LIBOR Rate Loans in connection with which the Borrower has or may incur Hedging Obligations, additional obligations may be associated with prepayment, in accordance with the terms and conditions of the applicable Hedging Contracts. The Borrower shall give the Bank, no later than 10:00 a.m., New York City time, at least four (4) Business Days notice of any proposed prepayment of any LIBOR Rate Loans, specifying the proposed date of payment of such LIBOR Rate Loans, and the principal amount to be paid. Each partial prepayment of the principal amount of LIBOR Rate Loans shall be in an integral multiple of $100,000 and accompanied by the payment of all charges outstanding on such LIBOR Rate Loans (including the LIBOR Breakage Fee) and of all accrued interest on the principal repaid to the date of payment.

3.3 LIBOR Breakage Fee. Upon any prepayment of a LIBOR Rate Loan on any day that is not the last day of the relevant LIBOR Interest Period (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise), the Borrower shall pay an amount ("LIBOR Breakage Fee"), as calculated by the Bank, equal to the amount of any losses, expenses and liabilities (including without limitation any loss of margin and anticipated profits) that Bank may sustain as a result of such default or payment. The Borrower understands, agrees and acknowledges that: (i) the Bank does not have any obligation to purchase, sell and/or match funds in connection with the use of the LIBOR Rate as a basis for calculating the rate of interest on a LIBOR Rate Loan, (ii) the LIBOR Rate may be used merely as a reference in determining such rate, and (iii) the Borrower has accepted the LIBOR Rate as a reasonable and fair basis for calculating the LIBOR Breakage Fee and other funding losses incurred by the Bank. Borrower further agrees to pay the LIBOR Breakage Fee and other funding losses, if any, whether or not the Bank elects to purchase, sell and/or match funds.

3.4 Interest Provisions. Interest on the outstanding principal amount of each loan, when classified as a: (i) LIBOR Rate Loan, shall accrue during each LIBOR Interest Period at a rate per annum equal to the sum of the Adjusted LIBOR Rate for such LIBOR Interest Period plus the LIBOR Rate Margin, and be due and payable on each Interest Payment Date and on the Maturity Date, and (ii) Prime Rate Loan, shall accrue at a rate per annum equal to the sum of the Prime Rate plus the Prime Rate Margin, and be due and payable on each Interest Payment Date and on the Maturity Date. Nothing contained herein shall be construed to permit Borrower to make a Prime Rate Loan election except as expressly required under Section 4.1 or 4.2 hereof.

4. Miscellaneous LIBOR Rate Loan Terms.

4.1 LIBOR Rate Lending Unlawful. If the Bank shall determine (which determination shall, upon notice thereof to the Borrower be conclusive and binding on the Borrower) that the introduction of or any change in or in the interpretation of any law, rule, regulation or guideline, (whether or not having the force of law) makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for the Bank to make, continue or maintain any LIBOR Rate Loan as, or to convert any loan into, a LIBOR Rate Loan of a certain duration, the obligations of the Bank to make, continue, maintain or convert into any such LIBOR Rate Loans shall, upon such determination, forthwith be suspended until the Bank shall notify the Borrower that the circumstances causing such suspension no longer exist, and all LIBOR Rate Loans of such type shall automatically convert into Prime Rate Loans at the end of the then current LIBOR Interest Periods with respect thereto or sooner, if required by such law or assertion.

4.2 Unavailability of LIBOR Rate. In the event that Borrower shall have requested a LIBOR Rate Loan in accordance with Section 2 and the Bank, in its sole discretion, shall have determined that U.S. dollar deposits in the relevant amount and for the relevant LIBOR Interest Period are not available to the Bank in the London interbank market; or by reason of circumstances affecting the Bank in the London interbank market, adequate and reasonable means do not exist for ascertaining the LIBOR Rate applicable to the relevant LIBOR Interest Period; or the LIBOR Rate no longer adequately and fairly reflects the Bank's cost of funding loans; upon notice from the Bank to the Borrower, the obligations of the Bank under Section 2 to make or continue any loans as, or to convert any loans into, LIBOR

Rate Loans of such duration shall forthwith be suspended until the Bank shall notify the Borrower that the circumstances causing such suspension no longer exist, and all LIBOR Rate Loans of such type shall automatically convert into Prime Rate Loans at the end of the then current LIBOR Interest Periods with respect thereto.

4.3 Increased Costs. If, on or after the date hereof, the adoption of any applicable law, rule or regulation or guideline (whether or not having the force of law), or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(a) shall impose, modify or deem applicable any reserve, special deposit or similar requirement (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System of the United States) against assets of, deposits with or for the account of, or credit extended by, the Bank or shall impose on the Bank or on the London interbank market any other condition affecting its LIBOR Rate Loans or its obligation to make LIBOR Rate Loans; or

(b) shall impose on the Bank any other condition affecting its LIBOR Rate Loans or its obligation to make LIBOR Rate Loans, and the result of any of the foregoing is to increase the cost to the Bank of making or maintaining any LIBOR Rate Loan;

or to reduce the amount of any sum received or receivable by the Bank under this agreement with respect thereto, by an amount deemed by the Bank to be material, then, within 15 days after demand by the Bank, the Borrower shall pay to the Bank such additional amount or amounts as will compensate the Bank for such increased cost or reduction.

4.4 Increased Capital Costs. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other governmental authority affects or would affect the amount of capital required or expected to be maintained by the Bank, or person controlling the Bank, and the Bank determines (in its sole and absolute discretion) that the rate of return on its or such controlling person's capital as a consequence of its commitments or the loans made by the Bank is reduced to a level below that which the Bank or such controlling person could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by the Bank to the Borrower, the Borrower shall immediately pay directly to the Bank additional amounts sufficient to compensate the Bank or such controlling person for such reduction in rate of return. A statement of the Bank as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, the Bank may use any method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable.

4.5 Taxes. All payments by the Borrower of principal of, and interest on, LIBOR Rate Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, but excluding franchise taxes and taxes imposed on or measured by the Bank's net income or receipts (such non-excluded items being called "Taxes"). In the event that any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Borrower will

(a) pay directly to the relevant authority the full amount required to be so withheld or deducted;

(b) promptly forward to the Bank an official receipt or other documentation satisfactory to the Bank evidencing such payment to such authority; and

(c) pay to the Bank such additional amount or amounts as is necessary to ensure that the net amount actually received by the Bank will equal the full amount the Bank would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Bank with respect to any payment received by the Bank hereunder, the Bank may pay such Taxes and the Borrower will promptly pay such additional amount (including any penalties, interest or expenses) as is necessary in order that the net amount received by the Bank after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount the Bank would have received had not such Taxes been asserted.

If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Bank the required receipts or other required documentary evidence, the Borrower shall indemnify the Bank for any incremental Taxes, interest or penalties that may become payable by the Bank as a result of any such failure.

Exhibit B

Principal Amortization Schedule

EXHIBIT B

PRINCIPAL AMORTIZATION SCHEDULE

Wauwinet Inn LLC

Payment Dates	Monthly Principal Payment
5/1/16 – 4/1/17	$18,474
5/1/17 – 4/1/18	$19,131
5/1/18 – 4/1/19	$19,811
5/1/19 – 4/1/20	$20,516
5/1/20 – 4/1/21	$21,245
5/1/21 – 4/1/22	$22,001
5/1/22 – 4/1/23	$22,783

BENCHMARK REPLACEMENT AND EXTENSION AGREEMENT

THIS BENCHMARK REPLACEMENT AND EXTENSION AGREEMENT (this "Amendment"), dated as of April 5, 2023, to the Term Loan Agreement dated as of April 5, 2016 and that certain Promissory Note dated as of April 5, 2016 (collectively, as amended, restated, supplemented or otherwise modified and in effect prior to the date hereof, the "Existing Agreement") among WAUWINET INN LLC, a Delaware limited liability company ("Borrower") and CITIZENS BANK, N.A. ("Lender").

RECITALS

A. Borrower and Lender are parties to the Existing Agreement.

B. Certain loans and/or other extensions of credit under the Existing Agreement and/or other Existing Documents (as defined in Exhibit A hereto) bear or are permitted to bear interest, or incur or are permitted to incur fees, commissions or other amounts, based on USD LIBOR (as defined below) in accordance with the terms and conditions of the Existing Agreement and/or the other Existing Documents.

C. Each of the parties under the Existing Agreement have determined in accordance with the Existing Agreement and any other applicable Existing Document that USD LIBOR should be replaced with Daily Simple SOFR in accordance with the terms of this Amendment.

D. Borrower has requested, and Lender has agreed, to extend the Maturity Date of the Loan from April 5, 2023 to July 3, 2023.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

Article I. **Amendments**. Notwithstanding anything to the contrary contained in the Existing Agreement or in any other Existing Document, the Existing Agreement and each other applicable Existing Document are each hereby amended and modified to give effect to the provisions set forth on Exhibit A hereto on and as of the date hereof (the "Effective Date"). For the avoidance of doubt, to the extent provisions in the Existing Agreement and the other applicable Existing Documents apply to loans and/or other extensions of credit and such provisions are not specifically addressed by Exhibit A, such provisions in the Existing Agreement shall continue to apply to such loans and/or other extensions of credit from and after the Effective Date.

Article II. **Definitions**. Capitalized terms used and not defined herein shall have the meanings assigned to such terms in Exhibit A attached hereto. The following terms shall have the following meanings for purposes of this Amendment and the provisions contained herein:

"Loan Party" means any Borrower, guarantor, grantor, loan party or other person having any other analogous or similar role under the Existing Agreement or any other applicable Existing Document.

"MAE" means (i) "Material Adverse Effect" or any other analogous or similar term, in each case, to the extent so defined in the Existing Agreement or any other Existing Document or (ii) otherwise, if not so defined, (A) a material adverse change in, or a material adverse effect on, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of Borrower and its subsidiaries taken as a whole; or (B) a material adverse effect on (1) the ability of Borrower or any Loan

Party to perform its obligations under the Amended Documents, (2) the legality, validity, binding effect or enforceability against Borrower or any Loan Party of any Amended Document to which it is a party or (3) the rights, remedies and benefits available to, or conferred upon, Lender under any Amended Document.

Article III. **Notices**. To the extent that any Existing Document requires Lender to provide any notice to Borrower or any other party to such Existing Document, in connection with any benchmark transition event or early opt-in election with respect to USD LIBOR, a benchmark replacement date or the implementation of Daily Simple SOFR as a benchmark replacement (or, in each case, another analogous or similar event, election, date or term), this Amendment shall constitute such notice, and any other requirement that Lender provide notice regarding the subject matter of this Amendment is hereby waived by Borrower.

Article IV. **Representations and Warranties**. In order to induce Lender to enter into this Amendment, Borrower and each other Loan Party hereby represent and warrant to Lender on and as of the Effective Date that:

(a) Existence, Qualification and Power. Each of Borrower and each other Loan Party is a duly organized or formed, validly existing and, as applicable, in good standing under the jurisdiction of its incorporation or organization, (ii) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to execute and deliver this Amendment and perform its obligations under this Amendment and the other Amended Documents to which it is a party, and (iii) is duly qualified and is licensed and, as applicable, in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, except, in the case referred to in clause (iii), to the extent that failure to do so could not reasonably be expected to have a MAE.

(b) Authorization; No Contravention. The execution and delivery by Borrower and each other Loan Party of this Amendment and performance by Borrower and each other Loan Party of this Amendment and each other Amended Document to which each is party have been duly authorized by all necessary proceedings on the part of such Loan Party, and do not and will not (i) conflict with the Organizational Documents of such Loan Party, or (ii) conflict with or result in any breach or contravention of any provision of any other agreement binding upon such Loan Party or any provision of law, statute, rule or regulation to which such Loan Party is subject or any judgment, order, writ, injunction, license, or permit applicable to such Loan Party.

(c) Governmental Authorization; Other Consents. No approval or consent or filing with any governmental agency or authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Borrower or any other Loan Party of this Amendment or any other Amended Document, except for such approvals, consents, exemptions, authorizations, actions or notices that have been duly obtained, taken or made and in full force and effect.

(d) Execution and Delivery; Binding Effect. This Amendment has been, and each other Amended Document, when delivered, will have been, duly executed and delivered by Borrower and each other Loan Party party hereto or thereto, as applicable. This Amendment constitutes, and each other Amended Document when so delivered will constitute, a legal, valid and binding obligation of Borrower and each other Loan Party party hereto or thereto, as applicable, enforceable against Borrower or such other Loan Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(e) Incorporation of Representations and Warranties. The representations and warranties of Borrower and each other Loan Party set forth in the Existing Agreement and in any other Existing Document are true and correct in all material respects (or, in the case of any such representation or warranty already qualified by materiality, in all respects) on and as of the Effective Date (or, in the case of any such representation or warranty expressly stated to have been made as of a specific date, as of such specific date).

(f) Representation by Independent Counsel. Each of Borrower and each other Loan Party (i) has been represented by independent legal counsel of its choice (or has had the opportunity to consult with independent legal counsel of its choice) in connection with this Amendment, (ii) has reviewed this Amendment and understands the agreements contained herein and their impact on the terms of the Existing Agreement and each other Existing Document and Borrower's or such other Loan Party's rights and obligations thereunder and (iii) has knowingly and voluntarily agreed to execute and deliver this Amendment without duress.

Article V. **Reaffirmation of Guarantees and Security Interests**. Each of Borrower and each other Loan Party hereby (a) acknowledges its receipt of a copy of this Amendment and its review of the terms and conditions hereof and consents to the terms and conditions of this Amendment and the transactions contemplated thereby, (b) affirms and confirms, as applicable, its guarantees, pledges, grants and other undertakings under the Amended Agreement and the other Amended Documents to which it is a party, (c) agrees that (i) each Amended Document to which it is a party shall continue to be in full force and effect and (ii) all guarantees, pledges, grants and other undertakings thereunder shall continue to be in full force and effect (with the same priority, as applicable) and shall accrue to the benefit of the applicable secured party or parties thereunder, (d) certifies to Lender that there presently exist no defenses or offsets to the enforcement of the Note or other Amended Documents, and (e) releases and waives all claims and/or defenses it may now or hereafter have against Lender, Lender's successors and assigns, and their present and former officers, directors, employees, agents and attorneys, on account of any occurrence or matter relating to the Loan, the Amended Documents and/or the Property which accrued prior to the date of execution hereof.

Article VI. **Expenses and Fees**. Borrower hereby agrees to pay all reasonable out-of-pocket costs and expenses of Lender in connection with the negotiation, preparation, execution, and delivery of this Amendment and each other document contemplated hereby (including, without limitation, the reasonable fees and expenses of counsel).

Article VII. MISCELLANEOUS.

Section 7.1 Survival. Except as expressly provided in this Amendment, all covenants, agreements, representations and warranties made in the Existing Agreement and the other Existing Documents shall be and remain in full force and effect as written, unmodified hereby and are hereby ratified by Borrower and each other Loan Party. In the event of any conflict between the covenants, agreements, representations and warranties of this Amendment, on the one hand, and the Existing Agreement or any other applicable Existing Document, on the other hand, this Amendment shall control.

Section 7.2 Further Assurances. Each of Borrower and each other Loan Party agrees to execute such other documents, instruments and agreements and take such further actions reasonably requested by Lender to effectuate the provisions of this Amendment.

Section 7.3 Severability. If any clause or provision of this Amendment shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Amendment in any jurisdiction.

Section 7.4 Governing Law. This Amendment and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Amendment and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the jurisdiction that governs the Existing Agreement in accordance with the terms thereof.

Section 7.5 Entire Agreement. This Amendment, the Existing Agreement (as amended hereby) and the other applicable Existing Documents (as amended hereby) constitute the entire agreement among the parties to the Existing Agreement and such other applicable Existing Document with respect to the subject matter hereof and supersede all other prior agreements and understandings, both written and verbal, among such parties or any of them with respect to the subject matter hereof. Any exhibits or annexes attached hereto are hereby incorporated herein by reference and made a part hereof.

Section 7.6 Binding Effect, Beneficiaries. This Amendment shall be binding upon and inure to the benefit of the parties to the Existing Agreement and each other applicable Existing Document and their respective heirs, executors, administrators, successors, legal representatives and assigns, and no other party shall derive any rights or benefits herefrom.

Section 7.7 Construction. This Amendment shall be construed without regard to any presumption or other rule requiring construction against the party drafting this Amendment.

Section 7.8 Notices. All notices relating to this Amendment shall be delivered in the manner and subject to the provisions set forth in the Existing Agreement.

Section 7.9 Counterparts; Effectiveness; Electronic Execution. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single agreement. This Amendment shall become effective when it shall have been executed by Lender and when Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or in electronic (e.g., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Amendment. The words "execution," "signed," "signature," and words of like import in this Amendment shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act or the Uniform Commercial Code, each as amended, and the parties hereto hereby waive any objection to the contrary, provided that (x) nothing herein shall require Lender to accept electronic signature counterparts in any form or format and (y) Lender reserves the right to require, at any time and at its sole discretion, the delivery of manually executed counterpart signature pages to this Amendment and the parties hereto agree to promptly deliver such manually executed counterpart signature pages.

Section 7.10 Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

Section 7.11 Reference to and Effect on the Existing Agreement and the Other Existing Documents. On and after the Effective Date, each reference in any Existing Document to such Existing Document, and the use therein of "hereunder", "herein" or words of like import referring to such Existing Document, and each reference in the other Existing Documents to another Existing Document and the use therein of "thereunder", "thereof" or words of like import referring to such Existing Document, shall, in each case, mean and be a reference to such Existing Document as amended by this Amendment. Except as specifically amended by this Amendment, the Existing Agreement and the other Existing Documents shall remain in full force and effect (with the same priority, as applicable) and are hereby ratified and confirmed, and this Amendment shall not be considered a novation. The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of Lender or any other party under, the Amended Agreement, any of the other Amended Documents or otherwise. This Amendment shall be deemed to be a "Loan Document", "Credit Document", "Transaction Document", "Financing Agreement" or "Related Document" (or other analogous or similar defined term) for purposes of the Amended Agreement and the other Amended Documents.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Amendment to be duly executed by its respective authorized officer as of the day and year first above written.

LENDER:

CITIZENS BANK, N.A.

By: ____________________________
Name: Christopher F. Robie
Title: Senior Vice President

BORROWER:

WAUWINET INN LLC,
a Delaware limited liability company

By: NED Manager LLC,
a Delaware limited liability company,
Its Manager

By:____________________________
Name: __________________________
Title: Manager

IN WITNESS WHEREOF, each party hereto has caused this Amendment to be duly executed by its respective authorized officer as of the day and year first above written.

LENDER:

CITIZENS BANK, N.A.

By: ____________________________
Name: Christopher F. Robie
Title: Senior Vice President

BORROWER:

WAUWINET INN LLC,
a Delaware limited liability company

By: NED Manager LLC,
a Delaware limited liability company,
Its Manager

By: Stephen R Karp
Name: Stephen R. Karp
Title: Manager

ACKNOWLEDGED AND AGREED:

GUARANTORS:

NED EQUITY HOLDINGS LLC,
a Delaware limited liability company

By: NED Manager LLC,
a Delaware limited liability company,
Its Manager

By: Stephen R Karp
Name: Stephen R. Karp
Title: Manager

NANTUCKET ISLAND MANAGEMENT LLC,
a Massachusetts limited liability company

By: NED Manager LLC,
a Delaware limited liability company,
Its Manager

By: Stephen R Karp
Name: Stephen R. Karp
Title: Manager

EXHIBIT A

Notwithstanding anything to the contrary contained in the Existing Agreement or in any other Existing Document, the Existing Agreement and each other applicable Existing Document are each hereby amended and modified to give effect to the provisions set forth on this Exhibit A.

Article I. Definitions, Etc.

Section 1.01 **Defined Terms**. The following terms shall have the following meanings for purposes of this Amendment, including without limitation, this Exhibit A, and the provisions contained herein:

"ABR Credit Extension" means a Credit Extension based on the Alternate Base Rate.

"Alternate Base Rate" means:

(a) to the extent used in the Existing Agreement or other Existing Documents immediately prior to giving effect hereto, a rate of interest nominally based on an "Alternate Base Rate", "Alternative Base Rate", "ABR", "Base Rate" or other analogous or similar term generally indicating use of a benchmark rate other than, immediately prior to giving effect to the provisions of Article III of this Exhibit A, USD LIBOR but which term, immediately prior to giving effect to the provisions of Article III of this Exhibit A, would have included a component based on USD LIBOR; or

(b) to the extent that no such rate of interest referred to in the foregoing clause (a) is used within the Existing Agreement or any other Existing Document, a rate per annum equal to the greatest of (1) the Prime Rate in effect on such day, (2) the Federal Funds Rate in effect on such day plus 0.50% per annum and (3) Daily Simple SOFR on such day plus 1.00% per annum, provided that the Alternate Base Rate shall at no time be less than the Floor. If Lender shall have determined (which determination shall be conclusive absent clearly manifest error) that it is unable to ascertain the Federal Funds Rate or Daily Simple SOFR for any reason, including the inability or failure of Lender to obtain sufficient quotations in accordance with the terms of the definition of the term "Federal Funds Rate", the Alternate Base Rate shall be determined without regard to clause (2) or (3), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Rate or Daily Simple SOFR, as applicable, shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Daily Simple SOFR, as applicable, respectively.

"Amended Agreement" means the Existing Agreement, as amended pursuant to this Amendment and as may be further amended, supplemented or otherwise modified.

"Amended Documents" means the Existing Documents, as amended pursuant to this Amendment and as may be further amended, supplemented or otherwise modified.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period (or a similar or analogous period) pursuant to the Amended Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to the Amended Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" (or a similar or analogous term) pursuant to Section 4.03(d) of this Exhibit A.

"Benchmark" means, initially, SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 4.03(a) of this Exhibit A.

"Benchmark Replacement" means with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Lender giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate and an adjustment as a replacement for the then-current Benchmark for Dollar-denominated credit facilities at such time and (b) the related Benchmark Replacement Adjustment; provided, that any such Benchmark Replacement shall be administratively feasible as determined by Lender in its reasonable discretion. If the Benchmark Replacement would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of the Amended Agreement and the other Amended Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method of calculating or determining such spread adjustment (which may be a positive or negative value or zero), that has been selected by Lender giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated credit facilities at such time.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) has been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if such Benchmark is a term rate, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Replacement Related Definition" means any term defined in the Existing Agreement or any other Existing Document (or any partial definition thereof) as in effect immediately prior to giving effect to the provisions of this Amendment on the Transition Date, however phrased, primarily relating to the replacement of USD LIBOR or, if applicable, any successor benchmark, including by way of example any instances of "Benchmark", "Benchmark Replacement", "Benchmark Adjustment", "Benchmark Replacement Date", "Benchmark Transition Event", "Benchmark Unavailability Period", "Conforming Changes", "Early Opt-In Election", "Eurodollar Successor Rate", "LIBOR Successor Rate" or "Unadjusted Benchmark Replacement" or other analogous or similar terms used in determining and implementing a successor rate to USD LIBOR or, if applicable, such successor benchmark.

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if such Benchmark is a term rate, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Start Date" means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"Benchmark Unavailability Period" means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes under the Amended Agreement and under any Amended Document in accordance with Section 4.03 of this Exhibit A and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes under the Amended Agreement and under any Amended Document in accordance with Section 4.03 of this Exhibit A.

"Business Day" has the meaning specified for a "Business Day", "Banking Day" or similar or analogous term in the Amended Documents and, if no such meaning is specified in the Amended Documents, means any day other than a Saturday, Sunday or day on which banks in New York City, New York are authorized or required by law to close.

"Conforming Changes" means, with respect to either the use or administration of the Benchmark, or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including without limitation, changes to the definition of "Alternate Base Rate" or any similar or analogous definition, the definition of "Business Day" or any similar or analogous definition, the definition of "SOFR Interest Payment Date" or any similar or analogous definition, the addition or deletion of a concept of "interest period" or any similar or analogous definition, or the modification of the definition of "interest period" or any similar or analogous definition, the definition of "Government Securities Business Day", timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions of the kind referred to in Section 3.02(h) of this Exhibit A, and other technical, administrative or operational matters) that Lender decides may be appropriate in connection with the use or administration of the Benchmark or to reflect the adoption and implementation of any Benchmark Replacement or to permit the use and administration thereof by Lender in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of the Amended Agreement and the other Amended Documents).

"Credit Extension" means any extension of credit of any type denominated in Dollars under the Existing Agreement, the Amended Agreement, any other Existing Document or any other Amended Document, whether characterized as a loan, term loan, revolving loan, swingline loan, daylight overdraft loan, bid loan, advance, borrowing, credit extension, letter of credit or other financial accommodation, and whether constituting a new extension of credit, the renewal, extension of the expiry date or reinstatement or increase in the amount of an existing extension of credit or a conversion or continuation of an existing extension of credit.

"Daily Simple SOFR" means, for any day (a "SOFR Rate Day"), a rate per annum equal to the greater of (a) the sum of (i) SOFR for the day (such day, the "SOFR Determination Date") that is five (5) Government Securities Business Days prior to (A) if such SOFR Rate Day is a Government Securities Business Day, such SOFR Rate Day or (B) if such SOFR Rate Day is not a Government Securities Business Day, the Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's website, and (ii) the Daily Simple SOFR Adjustment, and (b) the Floor. If by 5:00 p.m. (New York City time) on the second (2nd) Government Securities Business Day immediately following any SOFR Determination Date, SOFR in respect of such SOFR Determination Date has not been published on the SOFR Administrator's website and a Benchmark Replacement Date with respect to SOFR has not occurred, then SOFR for such SOFR Determination Date will be SOFR as published in respect of the first preceding Government Securities Business Day for which such SOFR was published on the SOFR Administrator's website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to Borrower or any other Person.

"Daily Simple SOFR Adjustment" means one-tenth of one percent (0.10%).

"Dollar" or "$" means the lawful money of the United States.

"Existing Documents" means the Existing Agreement, each "Loan Document", "Credit Document", "Financing Agreement", "Transaction Document" or "Related Document" (or other analogous or similar defined term) and all other agreements, documents and instruments executed and delivered in connection with the Existing Agreement and the Credit Extensions thereunder, each as amended or otherwise modified immediately prior to giving effect to this Amendment, including without limitation any note, guarantee, security document, mortgage, or certificate; provided, that no derivative, swap agreement, hedge agreement or ISDA confirmation (or other analogous or similar document) shall constitute an Existing Document for purposes of this Amendment or the provisions contained in this Amendment.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States.

"Floor" means 0.00% per annum.

"GAAP" has the meaning set forth in Article VII of this Exhibit A.

"Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"Interest Period" means "Interest Period", "LIBOR Period" or any other analogous or similar term set forth in the Existing Agreement or any other applicable Existing Document describing the period during which a Credit Extension bears interest with reference to a specific setting, calculation or determination of a benchmark rate.

"LIBOR Rate" means any term defined in the Existing Agreement or any other Existing Document (or any partial definition thereof) as in effect immediately prior to giving effect to the provisions of this Amendment, however phrased, referring to USD LIBOR, including by way of example applicable terms phrased as "Adjusted LIBO Rate", "Adjusted LIBOR Rate", "LIBO Base Rate", "LIBO Rate", "LIBOR Rate", "LIBOR", "LIBOR Advantage Rate", "Eurodollar Rate", "Eurodollar Base Rate", "Eurocurrency Rate", "One-Month LIBOR" or "Daily LIBOR".

"Relevant Governmental Body" means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

"SOFR" means a rate equal to the secured overnight financing rate published by the SOFR Administrator on the website of the SOFR Administrator, currently at http://www.newyorkfed.org (or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time).

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Credit Extension" means any Credit Extension bearing interest or incurring fees, commissions or other amounts based upon Daily Simple SOFR, but excluding, for the avoidance of doubt, any ABR Credit Extension.

"SOFR Determination Date" has the meaning assigned to such term in the definition of "Daily Simple SOFR".

"SOFR Interest Payment Date" means, with respect to any SOFR Credit Extension, the first Business Day of each calendar month and the maturity date of such applicable Credit Extension.

"SOFR Rate Day" has the meaning assigned to such term in the definition of "Daily Simple SOFR".

"Transition Date" means April 5, 2023.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"USD LIBOR" means the London interbank offered rate for Dollars.

"USD LIBOR Credit Extension" means a Credit Extension bearing interest or incurring fees, commissions or other amounts based on USD LIBOR, but excluding, for the avoidance of doubt, any ABR Credit Extension.

"USD LIBOR Related Definition" means any term defined in the Existing Agreement or any other Existing Document (or any partial definition thereof) as in effect immediately prior to giving effect to the provisions of this Amendment on the Transition Date, however phrased, primarily relating to the determination, administration or calculation of USD LIBOR, including by way of example any instances of the LIBOR Rate and other applicable terms phrased as "LIBOR Reserve Percentage", "Eurodollar Reserve Percentage", "LIBOR Determination Date" and "LIBOR Reset Date". "USD LIBOR Related Definition" does not include any term such as "Alternative Base Rate", "ABR", "Base Rate" or other analogous or similar term generally indicating use of a benchmark rate other than, immediately prior to giving effect to the provisions of Article III of this Exhibit A, USD LIBOR, even if such term, immediately prior to giving effect to the provisions of Article III of this Exhibit A, would have included a component based on USD LIBOR.

Section 1.02 **Definitions**. The Existing Agreement and each other applicable Existing Document (if any) are hereby amended and modified to incorporate the definitions set forth in Section 1.01 of this Exhibit A, *mutatis mutandis*, to the extent used in any such Existing Document, including as a result of the effectiveness of this Amendment. If the Existing Agreement or any other Existing Document as in effect immediately prior to giving effect to the provisions of this Amendment already defines any term defined in Section 1.01 of this Exhibit A, the definition in Section 1.01 of this Exhibit A shall supersede such definition in the Existing Agreement or such Existing Document, if applicable, for the purpose and solely for the purpose of the definitions and provisions contained in this Amendment.

Section 1.03 **Rules of Construction**. For the avoidance of doubt, if and to the extent that the Existing Agreement or any other Existing Document does not, immediately prior to the effectiveness of this Amendment, include any provision or term that would be modified pursuant to any provision of Article II or Article III of this Exhibit A, such provision of Article II or Article III of this Exhibit A shall be disregarded to such extent. Any reference in this Amendment to "Borrower" shall be deemed to refer to (a) "Borrowers", "the applicable Borrower", "each Borrower", "such Borrower" or "any Borrower", as applicable, if the "Borrower" identified above constitutes more than one person or (b) the "Administrative Borrower", "Borrowers' Agent" or other analogous or similar entity, as applicable, if the Existing Agreement includes a mechanism for such entity to act for or on behalf of Borrower.

Section 1.04 **Daily Simple SOFR Conforming Changes**. In connection with the use or administration of Daily Simple SOFR, Lender will have the right, in consultation with Borrower, to make Conforming Changes from time to time and, notwithstanding anything to the contrary in this Exhibit A, the Amended Agreement or any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to the Amended Agreement or any other Existing Document. Lender will promptly notify Borrower of the effectiveness of any Conforming Changes in connection with the use or administration of Daily Simple SOFR.

Section 1.05 **Rates Generally**. Lender does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to, any rate of interest under the Amended Documents, including the Alternate Base Rate, the Benchmark, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), any component definition thereof or rates referred to in the definition thereof, including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or will produce the same value or economic equivalence of, or have the same volume or liquidity as, any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Lender and its affiliates or other related entities may engage in transactions that affect the calculation of any rate of interest under the Amended Documents, including the Alternate Base Rate, the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to Borrower. Lender does not warrant or accept responsibility for, and shall not have any liability with respect to, such transactions. Lender may select information sources or services in its reasonable discretion to ascertain any rate of interest under the Amended Documents, including the Alternate Base Rate, the Benchmark, or any alternative, successor or replacement rate (including any Benchmark Replacement), in each case pursuant to the terms of the Amended Agreement, and shall have no liability to Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Article II. Discontinuance of USD LIBOR.

Section 2.01 **USD LIBOR Credit Extensions**. Notwithstanding any provision of the Existing Agreement or any other Existing Document to the contrary, regardless of whether USD LIBOR is operational, reported, published on a synthetic basis or otherwise available in the market as of the Transition Date, subject to Article V of this Exhibit A: (a) no USD LIBOR Credit Extension shall be available, requested or made thereunder, (b) any request to convert an existing Credit Extension to a USD LIBOR Credit Extension shall be ineffective and (c) any request for a new USD LIBOR Credit Extension, or to continue, renew, extend, reinstate or increase an existing USD LIBOR Credit Extension as a USD LIBOR Credit Extension, shall be ineffective, in each case, to the extent that any such USD LIBOR Credit

Extension would, but for the provisions of this Exhibit A, reference a setting of USD LIBOR on or after the Transition Date.

Section 2.02 **USD LIBOR Related Definitions**. Notwithstanding any provision of the Existing Agreement or any other Existing Document to the contrary, subject to the provisions of Article V of this Exhibit A, from and after the Transition Date, the USD LIBOR Related Definitions shall be deemed deleted from the Existing Agreement and each other applicable Existing Document and of no further force or effect.

Article III. New SOFR Credit Extensions.

Section 3.01 **Modification to LIBOR Rate Definitions and Provisions**. Notwithstanding any provision of the Existing Agreement or any other Existing Document to the contrary, subject to the provisions of Article V of this Exhibit A, (a) from and after the Transition Date, any usage of "LIBOR Rate" or "Adjusted LIBOR Rate" (other than as used in a USD LIBOR Related Definition that has been deleted pursuant to the terms of this Exhibit A or a benchmark replacement provision) in the Existing Agreement or any other Existing Document, as applicable, including, without limitation, in connection with an ABR Credit Extension, shall be deemed deleted and of no further force or effect and the term "Daily Simple SOFR" shall be inserted in lieu thereof, (b) from and after the Transition Date, any usage of "LIBOR Interest Period", "Interest Period", "LIBOR Period" or any other analogous or similar term (other than as used in a USD LIBOR Related Definition that has been deleted pursuant to the terms of this Exhibit A) in the Existing Agreement or any other Existing Document, as applicable, shall be deemed deleted and of no further force or effect, (c) to the extent that, immediately prior to giving effect to the provisions of this Exhibit A, the Existing Agreement or any other Existing Document required or permitted the request, making and maintenance of any type of Credit Extension as a USD LIBOR Credit Extension, such type of Credit Extension shall be available, and may be requested, made and maintained, as a SOFR Credit Extension from and after the Transition Date, subject to satisfaction of the applicable provisions (including conditions precedent to Credit Extensions) of the Amended Agreement and any other applicable Amended Document, and (d) any term or provision of the Existing Agreement or any other Existing Document (other than as used in a USD LIBOR Related Definition that has been deleted pursuant to the terms of this Exhibit A) that refers or is applicable to a USD LIBOR Credit Extension immediately prior to giving effect to the provisions of this Amendment on the Transition Date shall be deemed to refer to and be applicable to a SOFR Credit Extension from and after the Transition Date, unless, and to the extent that, such term or provision is superseded or otherwise modified by this Amendment, in which case, such term or provision shall to such extent be construed as so superseded or otherwise modified as set forth in this Amendment.

Section 3.02 **SOFR Conventions and Provisions**. Notwithstanding any provision of the Existing Agreement or any other Existing Document to the contrary, subject to Article V of this Exhibit A, the following provisions shall apply for purposes of the Amended Agreement and each other applicable Amended Document, and the Existing Agreement and each other applicable Existing Document are hereby amended and modified from and after the Transition Date to incorporate such provisions therein:

(a) **London Business Days**. To the extent that any term or provision of the Existing Agreement or any other Existing Document refers to the term "Business Day", "Banking Day", "business day" or other analogous or similar term or provision defining generally the days on which banks are deemed to be open for business, such term or provision shall instead be deemed modified to delete any provision therein referencing London, the United Kingdom or the London interbank market to the extent that any such provision relates primarily to the use or administration of USD LIBOR.

(b) **Interest Payment Dates**. Accrued interest on each SOFR Credit Extension shall be payable in arrears on each SOFR Interest Payment Date applicable thereto and at such other times as may be specified herein or in the Amended Agreement or any other Amended Document. To the extent that any provision of the Existing Agreement or any other Existing Document refers to the term "Interest Payment Date" (in the context of the dates on which payments of interest on certain Credit Extensions are to be made) or any other analogous or similar term or provision defining generally the dates on which payments of interest on certain Credit Extensions are to be made, such term or provision shall be deemed to refer to a SOFR Interest Payment Date with respect to any SOFR Credit Extension.

(c) **Types of Credit Extension**. To the extent that the Existing Agreement or any other Existing Document categorizes Credit Extensions generally or by definition by type of benchmark rate that applies to such Credit Extensions, SOFR Credit Extensions shall constitute a type of Credit Extension, and any such definition shall be deemed to include SOFR Credit Extensions.

(d) **Notice Periods**. Any provision under the Existing Agreement or any other Existing Document that required, immediately prior to giving effect to the provisions of Article II of this Exhibit A, Borrower to provide notice to Lender of any borrowing, continuation, renewal, extension, reinstatement, increase, conversion or prepayment of any USD LIBOR Credit Extension shall be deemed, in each case, to require notice thereof with respect to a SOFR Credit Extension in lieu of such USD LIBOR Credit Extension; provided, however, that any notice of any such borrowing, continuation, renewal, extension, reinstatement, increase, conversion or prepayment of a SOFR Credit Extension must be received by Lender no later than three (3) Government Securities Business Days prior to the proposed date thereof by the time of day set forth with respect thereto in the Existing Agreement or such other Existing Document, as applicable.

(e) **Interest Periods**. Any provision under the Existing Agreement or any other Existing Document that required, immediately prior to giving effect to the provisions of Article II of this Exhibit A, Borrower to provide a selection of an Interest Period with respect to any borrowing, continuation, renewal, extension, reinstatement, increase, conversion or prepayment of any USD LIBOR Credit Extension shall be, in each case, disregarded with respect to a SOFR Credit Extension solely to the extent of any such requirement.

(f) **Computation of Interest**. All interest under the Amended Agreement and the Amended Documents on any SOFR Credit Extension shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest under the Amended Agreement and the Amended Documents on any SOFR Credit Extension shall be computed on a daily basis based upon the outstanding principal amount of such Credit Extension as of the applicable date of determination.

(g) **Increased Costs**. Any provision in the Existing Agreement or any other Existing Document that constitutes a requirement for Borrower to compensate Lender for increased costs incurred or imposed as a result of a change of law, or any interpretation thereof (including, in each case, changes in capital requirements), or any other analogous or similar yield maintenance provision (including any tax gross-up and indemnity provision) shall be modified *mutatis mutandis* to include, as a cost or expense subject to such provisions, without limitation, (i) any cost or expense incurred by Lender with respect to its Credit Extensions under the Amended Agreement and the other Amended Documents in compliance with applicable reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining any maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement)), special deposit, liquidity, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Lender, (ii) any taxes to which Lender is subject as a result of its Credit Extensions under the Amended Agreement and the other Amended Documents, or its deposits, reserves, other liabilities or capital attributable thereto and (iii) any other condition, cost or expense affecting the Amended Agreement and the other Amended Documents or Credit Extensions made by Lender.

(h) **Compensation for Losses**.

(i) To the extent included in the Existing Agreement or other Existing Documents immediately prior to giving effect hereto, any provision that, immediately prior to giving effect to the provisions of Article II of this Exhibit A, required Borrower to compensate Lender for the payment, prepayment, repayment, assignment or conversion of any USD LIBOR Credit Extension other than at the end of the Interest Period therefor or the failure of a Borrower to borrow, convert, continue or prepay any USD LIBOR Credit Extension on the date specified in any notice delivered pursuant thereto, or other similar breakage provision, shall, in each case, (A) be deemed to apply to SOFR Credit Extensions *mutatis mutandis* for any such event that occurs on any date other than on the SOFR Interest Payment Date therefor instead of at the end of an Interest Period and (B) not refer to any calculation or methodology for determining such compensation but shall, in lieu thereof, refer to any loss, cost or expense that may result to Lender attributable to such event.

(ii) To the extent that no such provision referred to in the foregoing clause (h)(i) is used within the Existing Agreement or other Existing Documents, in the event of (A) the payment or prepayment of any principal of any SOFR Credit Extension other than on the SOFR Interest Payment Date therefor whether voluntary, mandatory, automatic, by reason of acceleration (including as a result of an Event of Default (or similar or analogous term)), (B) the conversion of any SOFR Credit Extension other than on the SOFR Interest Payment Date therefor (including as a result of an Event of Default (or similar or analogous term)) or (C) the failure to borrow, convert or prepay any SOFR Credit Extension on the date specified in any notice delivered pursuant hereto, then, in any such event, Borrower shall compensate the Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of Lender setting forth any amount or amounts that Lender is entitled to receive pursuant to this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(i) **London Interbank Market**. Any reference in the Existing Agreement or any other Existing Document to the London interbank market, London interbank eurodollar market or other analogous or similar term shall be disregarded and, to the extent that such provision operates as a limitation on, or qualification of, the applicability of another provision, such limitation or qualification will be deemed removed unless such provision relates to the measurement of compensation for breakage, break funding or other failure by Borrower to borrow, convert, continue, repay or prepay any borrowing, loan or advance on the date specified in any notice delivered pursuant to the Amended Agreement or Amended Document, in which case (i) such compensation will be measured by Lender's loss, cost and expense attributable to such failure, including any loss, cost or expense arising from the liquidation or redeployment of funds, and (ii) a certificate of Lender setting forth any amount or amounts that Lender is entitled to receive pursuant to such provision shall be delivered to Borrower and shall be conclusive absent manifest error.

Article IV. Benchmark Unavailability and Benchmark Replacement.

Section 4.01 Existing Benchmark Replacement Provisions. Notwithstanding any provision of the Existing Agreement or any other Existing Document to the contrary, any provision of the Existing Agreement or any Existing Document addressing the unavailability and/or inability to determine USD

LIBOR or any other benchmark, or effecting a benchmark replacement, successor Eurodollar rate or successor LIBOR rate or otherwise effecting a replacement of a benchmark, shall, from and after the Transition Date, be deemed deleted from the Existing Agreement and each other applicable Existing Document. The Existing Agreement and each other applicable Existing Document are hereby amended and modified from and after the Transition Date to incorporate the provisions of this Article IV.

Section 4.02 Inability to Determine Rates. Subject to Section 4.03 of this Exhibit A, if, prior to setting the daily interest rate for a SOFR Credit Extension:

(a) Lender determines (which determination shall be conclusive and binding absent manifest error) that "Daily Simple SOFR" cannot be determined pursuant to the definition thereof, or

(b) Lender determines that for any reason in connection with any request for a SOFR Credit Extension or a conversion thereto that Daily Simple SOFR does not adequately and fairly reflect the cost to Lender of funding such Loan,

Lender will promptly so notify Borrower.

Upon notice thereof by Lender to Borrower, any obligation of Lender to make or maintain SOFR Credit Extensions, and any right of Borrower to convert ABR Credit Extensions to SOFR Credit Extensions, shall be suspended until Lender revokes such notice. Upon Borrower's receipt of such notice, (i) Borrower may revoke any pending request for a borrowing of or conversion to SOFR Credit Extensions or, failing that, subject to Article VI of this Exhibit A, Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to ABR Credit Extensions in the amount specified therein and, (ii) subject to Article VI of this Exhibit A, any outstanding affected SOFR Credit Extensions will be deemed to have been converted into ABR Credit Extensions. Upon any such conversion, Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 3.02(h) of this Exhibit A. Subject to Section 4.03 of this Exhibit A, if Lender determines (which determination shall be conclusive and binding absent manifest error) that "Daily Simple SOFR" cannot be determined pursuant to the definition thereof on any given day, the Alternate Base Rate shall be determined by Lender without reference to any component of the Alternate Base Rate that references "Daily Simple SOFR" until Lender revokes such determination.

Section 4.03 Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary in the Amended Agreement or in any other Amended Document (and a Hedging Contract shall be deemed not to be an "Amended Document" for purposes of this Section 4.03), upon the occurrence of a Benchmark Transition Event, Lender and Borrower may amend the Amended Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after Lender has posted such proposed amendment to Borrower. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 4.03(a) will occur prior to the applicable Benchmark Transition Start Date.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Lender will have the right, in consultation with Borrower, to make Conforming Changes from time to time and, notwithstanding anything to the contrary in this Exhibit A, the Amended Agreement or any other Amended Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to the Amended Agreement or any other Amended Document.

(c) Notices; Standards for Decisions and Determinations. Lender will promptly notify Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Lender will notify Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 4.03(d) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Lender pursuant to this Section 4.03, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to the Amended Agreement or any other Amended Document, except, in each case, as expressly required pursuant to this Section 4.03.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary in this Exhibit A, in the Amended Agreement or any other Amended Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Lender in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then (i) Lender may modify the definition of "interest period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Lender may modify the definition of "interest period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, Borrower may revoke any pending request for a Borrowing of or conversion to SOFR Credit Extensions to be made or converted during any Benchmark Unavailability Period and, failing that, subject to Article VI of this Exhibit A, (i) Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Credit Extensions and (ii) any outstanding affected SOFR Credit Extensions will be deemed to have been converted immediately into ABR Credit Extensions. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, any component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of such rate.

(f) Benchmark Replacement Related Definitions. Notwithstanding any provision of the Existing Agreement or any other Existing Document to the contrary, from and after the Transition Date, the Benchmark Replacement Related Definitions shall be deemed deleted from the Existing Agreement and each other applicable Existing Document and of no further force or effect.

Article V. Delayed Rate Switch for Prior USD LIBOR Credit Extensions. The provisions or other Articles of this Exhibit A shall not apply with respect to any (a) USD LIBOR Credit Extension requested, made or outstanding that bears interest with reference to a USD LIBOR rate that (i) is or was set at any time prior to the Transition Date and (ii) is held constant for a specifically designated period and is not reset on a daily or a substantially daily basis (disregarding day count, weekend or holiday conventions) and (b) any retroactive margin, yield, fee or commission increases available to Lender as a result of any inaccuracy in any financial statement or compliance certificate that, if corrected, would have led to the application of a higher interest margin or yield with respect to any USD LIBOR Credit Extension or any higher fee or commission for any applicable period, and in each case, notwithstanding anything contained herein to the contrary, the USD LIBOR Related Definitions and provisions with respect thereto (as in effect immediately prior to giving effect to the provisions of this Amendment on the Transition Date) shall continue in effect solely for such purpose; provided that, with respect to any such USD LIBOR Credit Extension described in clause (a) of this Article V, such USD LIBOR Credit Extension shall only continue in effect in accordance with its terms until the then-current Interest Period for such USD LIBOR Credit Extension has concluded.

Article VI. **Alternate Base Rate Provisions**. To the extent that the Existing Agreement does not provide for ABR Credit Extensions, either as a borrowing option or fallback rate of interest, the provisions of this Article VI shall apply to any ABR Credit Extension under the Amended Agreement pursuant to Articles IV or V of this Exhibit A:

(a) Each ABR Credit Extension shall bear interest, for each day, at a rate per annum equal to the Alternate Base Rate in effect for such day plus the applicable margin (or analogous pricing component) applicable to SOFR Credit Extensions minus 1.00%;

(b) Interest on each ABR Credit Extension shall be paid monthly in arrears on the first Business Day of each calendar month and at such other times as may be specified for interest generally in the Amended Documents;

(c) Interest on each ABR Credit Extension shall be computed on the basis of a year of 360 days (or, at times when the Alternate Base Rate is based on the Prime Rate, 365 days (or 366 days in a leap year)), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest on any ABR Credit Extension shall be computed on a daily basis based upon the outstanding principal amount of such Credit Extension as of the applicable date of determination. For any ABR Credit Extension, the Alternate Base Rate shall be determined by Lender, and such determination shall be conclusive absent clearly manifest error.

(d) The following terms shall have the following meanings for purposes of this Article VI:

"Federal Funds Rate" means, for any day, a rate per annum (expressed as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average of the quotations for such day on such transactions received by Lender from three federal funds brokers of recognized standing selected by it and (c) if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Exhibit A.

"***Prime Rate***" means a rate per annum equal to the prime rate of interest announced from time to time by Citizens Bank, N.A. or its parent company (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes.

Article VII. Changes in GAAP.

Notwithstanding any other provision of the Amended Agreement or any other Amended Document to the contrary, if at any time any change in generally accepted accounting principles in effect from time to time in the United States ("GAAP") would affect the computation of any financial ratio or requirement set forth in any Amended Document, and either Borrower or Lender shall so request, Lender and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) Borrower shall provide to Lender financial statements and other documents required under this Amended Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP; provided, further that, without limiting the foregoing, all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of Financial Accounting Standards Board (FASB) ASC 842 and related interpretations shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations under the Amended Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as capital lease obligations (however defined) in the financial statements.

Article VIII. Other Amendments.

(a) Notwithstanding anything to the contrary in the Existing Documents, including, without limitation, Section 3.1 of the Term Loan Agreement and the fifth grammatical paragraph of the Promissory Note dated as of April 5, 2016, the Maturity Date of the Loan is hereby extended to July 3, 2023 (the "Extended Maturity Date"). Any and all references in the Existing Documents to the Maturity Date shall hereafter be deemed to refer to the Extended Maturity Date.

(b) During the remainder of the term of the Loan, as extended hereby, Borrower shall pay to Lender, on each Interest Payment Date, monthly installments of principal in the amount of $107,789.00 each, plus interest set forth in the Note (as amended hereby) until payment in full of the Loan. The entire unpaid balance of principal and interest shall be paid in one (1) final installment on the Extended Maturity Date.

(c) The extension granted hereby is subject to the receipt by Lender of: (i) evidence in all respects satisfactory to Lender confirming that all real estate taxes and assessments on the Property are currently paid; (ii) a satisfactory title rundown of the Property showing no intervening liens or encumbrances since the date of the most recent endorsement to the title insurance policy issued to Lender and insuring the lien of the Mortgage (the "Title Policy"); (iii) a date-down endorsement to the Title Policy in form and content satisfactory to Lender; (iv) updated good standing certificates for Borrower and Guarantor and their respective managers; and (v) payment by Borrower of all costs and expenses incurred by Lender in connection with this extension, including the legal fees of counsel to Lender.

SECOND AMENDMENT TO NOTE, LOAN AGREEMENT AND OTHER LOAN DOCUMENTS

THIS SECOND AMENDMENT TO NOTE AND LOAN AGREEMENT AND OTHER LOAN DOCUMENTS (this "Amendment") is dated as of September 22, 2023 and made effective as of July 3, 2023, by and among WAUWINET INN LLC, a Delaware limited liability company (as defined and otherwise described in the Loan Agreement (defined below) and so referred to herein, the "Borrower") and CITIZENS BANK, N.A., as "Lender" (as defined and otherwise described in the Loan Agreement (defined below) and so referred to herein), and acknowledged and agreed to by NED EQUITY HOLDINGS LLC, a Delaware limited liability company (as defined and otherwise described in the Loan Agreement and so referred to herein, the "Guarantor") as set forth below. Borrower and Guarantor are sometimes hereinafter collectively referred to as the "Loan Parties" or singly as a "Loan Party".

RECITALS

A. Reference is made to that certain Term Loan Agreement dated as of April 5, 2016, as amended by that certain Benchmark Replacement and Extension Agreement dated as of April 5, 2023 (the "First Amendment"), by and between Lender and Borrower (as the same may be further amended, restated, modified or supplemented from time to time, the "Loan Agreement").

B. Reference is further made to that certain Promissory Note dated as of April 5, 2016 in the original principal amount of $8,700,000 made by Borrower payable to the order of Lender, as amended by the First Amendment (as the same may be further amended, restated, renewed, modified or supplemented from time to time, the "Note"), which Note includes the LIBOR Addendum attached thereto as Exhibit A, as amended by the First Amendment (the "Addendum").

C. The unpaid principal balance of the Note as of the date of this Amendment is $6,926,902.00.

D. The Loan and the Note matured on July 3, 2023 (the "Maturity Default"), and Borrower has requested that the Lender extend the maturity date of the Loan and the Note for a period of five (5) years (the "Extension Period") to September 22, 2028.

E. Lender has agreed to such request by Borrower and has agreed to make certain amendments to the Note and Loan Agreement, as and to the extent expressly provided herein.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENTS

1. Recitals. The Recitals set forth above are incorporated herein by reference as if fully set forth herein at length.

2. Defined Terms. Unless otherwise defined herein, all capitalized terms used herein without definition have the respective meanings assigned to such terms in the Loan Agreement or, if not defined in the Loan Agreement, as set forth in the Note (including, without limitation, those terms incorporated therein by reference).

3. Amendments to Note. As of the Amendment Effective Date (as defined below), the Note is hereby amended as follows:

(a) Monthly Payments; Maturity Date. The fourth and fifth grammatical paragraph of each Note is hereby deleted in its entirety and replaced with the following:

> "Interest shall be payable on each Interest Payment Date and at the maturity hereof, until repayment in full of this Note, in accordance with the Addendum. Interest only shall be payable through and including October 1, 2025. Thereafter, in addition to installments of interest, Borrower shall also pay to Lender, on each Interest Payment Date commencing November 1, 2025, consecutive monthly installments of principal in reduction of the aggregate unpaid principal balance of the Loan based on a 25-year amortization schedule and the actual Swap Rate then in effect ("Principal Amortization"), with the entire principal balance and all accrued and unpaid interest due and payable in full on the Maturity Date, subject to extension as provided in Section 3 of the Loan Agreement. The "Swap Rate" shall mean the annual fixed rate of interest payable under any Interest Rate Protection Agreement entered into by Borrower pursuant to Section 11.13 of the Loan Agreement, plus the Applicable SOFR Margin.
>
> The entire principal balance, together with all unpaid interest, fees, expenses and other charges, if not sooner paid, shall in any event be paid in one (1) final installment on September 22, 2028 (the "Maturity Date"), subject to extension as provided in Section 3 of the Loan Agreement."

(b) Interest Rate. The Addendum to the Note is hereby deleted in its entirety and replaced with the "Interest Rate Addendum" attached hereto as Exhibit A. The applicable interest rate is hereby amended such that the applicable interest rate for any SOFR Credit Extension shall be Daily Simple SOFR plus the "SOFR Rate Margin" of 2.80% per annum, all as more particularly set forth on Exhibit A.

(c) Re-advances. On the Amendment Effective Date, Lender shall re-advance to Borrower the sum of $173,098.00 (the "Closing Advance") to restore the outstanding principal amount of the Note to $7,100,000.

4. Amendments to Loan Agreement. As of the Amendment Effective Date (as defined below), the Loan Agreement is hereby amended as follows:

(a) Term. Section 3 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"3.1 Term of Loan; Extension Rights. The Loan shall be for a term ("Initial Term") commencing on the Closing Date and ending on September 22, 2028 ("Initial Maturity Date"). Borrower shall have the option to extend the term of the Loan for two (2) consecutive periods of twelve (12) months each (each, an "Extension Option"), the first such extension to expire on September 22, 2029 (the "First Extended Maturity Date") and the second such extension to expire on September 22, 2030 (the "Second Extended Maturity Date"), upon satisfaction of the conditions set forth in Section 3.2. The First Extended Maturity Date and Second Extended Maturity Date are herein singly and collectively referred to as the "Extended Maturity Date".

3.2 Conditions to Extending the Loan. Upon satisfaction of each of the following conditions, to Lender's satisfaction, Borrower may extend the Initial Maturity Date until the applicable Extended Maturity Date (the "Extended Term"):

(a) Notice From Borrower. Borrower shall have given Lender written notice of Borrower's request to exercise its extension right at least sixty (60) days and not more than one hundred twenty (120) days before the Initial Maturity Date or the First Extended Maturity Date, as applicable;

(b) No Default. No Default or Event of Default shall exist;

(c) Appraisal. Lender has received and approved an updated Appraisal of the Property, the cost of which Appraisal shall be borne by Borrower;

(d) LTV. The Loan to Value Ratio shall be not more than fifty-five percent (55%) based on the Appraised Value in such updated Appraisal;

(e) DSCR. The Debt Service Coverage Ratio is not less than 1.40:1.00 based upon current year-end financial statements and an annual rate of interest equal to the greater of (i) the Swap Rate then in effect, (ii) 8.50% or (iii) 2.80% over the 10-year U.S. Treasury Rate then in effect;

(f) Additional Documents. Borrower and Guarantor shall have executed and delivered to Lender such agreements and documents as Lender may reasonably require to evidence the extension, together with a date-down endorsement to the Title Policy and evidence of paid real estate taxes;

(g) Extension Fee. Borrower shall have paid to Lender an "Extension Fee" in an amount equal to 0.15% of the then outstanding principal balance of the Loan, on or before the Initial Maturity Date or the First Extended Maturity Date, as applicable;

(h) Interest Rate Swap. Borrower shall have entered into an Interest Rate Protection Agreement in accordance with Section 11.13 for the duration of such Extended Term with a notional amount equal to the unpaid principal balance of the Loan at the time of such extension; and

(k) Before End of Term. Each of the foregoing conditions are satisfied not later than, and on, the Initial Maturity Date or the First Extended Maturity Date, as applicable.

Lender shall notify Borrower in writing if all of the conditions precedent to the extension set forth above in this Section 3.2 have been satisfied (other than payment of the Extension Fee), or if further information, certificates or work are required to satisfy such conditions precedent. If Borrower does not satisfy the requirements set forth in subsections (d) or (e), then Borrower shall have the right to pay down the principal balance of the Loan to such amount (as determined by Lender in its reasonable discretion) as will cause such requirements to be met prior to the Initial Maturity Date or the First Extended Maturity Date, as applicable. If Lender determines that the conditions to extension set forth above in this Section 3.2 have been satisfied, Lender shall so notify Borrower and, upon Lender's receipt of the Extension Fee on or before the Initial Maturity Date or the First Extended Maturity Date, as applicable, so long as no Default exists, the term of the Loan shall be extended until the applicable Extended Maturity Date."

(b) Financial Statements, Certificates and Information. Section 10.2 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"10.2 Financial Statements, Certificates and Information.

(a) Within ninety (90) days after the end of each calendar year, commencing December 31, 2023, Borrower shall submit to Lender internally prepared (unaudited) annual financial statements certified by the Chief Financial Officer of New England Development. All such financial statements shall:

(1) be prepared in accordance with Generally Accepted Accounting Principles or on a tax basis and in a format previously submitted and acceptable to Lender;

(2) include an operating statement and a balance sheet, profit and loss statements and year-to-date figures for average occupancy, average daily rate ("ADR") and revenue per available room ("RevPAR"), and income and expense statements, and shall be prepared on an accrual tax basis;

(3) include a report on leasing consistent with past submittals to Lender if applicable or otherwise acceptable to Lender; and

(4) include compliance certificates stating whether or not a Default or Event of Default exists to Borrower's knowledge (and, if so, identifying the nature and status thereof) and certifying whether Borrower then complies with the DSC Covenant for the Calculation Period just ended, together with Borrower's calculations and supporting financial documentation to evidence its method of determination. The determinations of Borrower shall not be binding on Lender and Lender may use its own methodology and sources in a commercially reasonable manner to verify Borrower's compliance with such covenant, in which case the determinations of Lender shall be deemed conclusive absent manifest error.

(b) Within forty-five (45) days after September 30 of each calendar year, commencing September 30, 2023, Borrower shall furnish to Lender a financial report accurately reflecting the results of the operations of the Property for the nine (9) month period ending September 30, including without limitation, (i) a profit and loss statement and an income and expense statement on a year-to-date basis and (ii) figures for average occupancy, ADR and RevPAR for the individual months June through September and on a year-to-date basis; such financial statements to be certified to as being accurate by Borrower.

(c) The Borrower will deliver, or cause to be delivered, to Lender the financial statements, reports, certifications and information required of the Guarantor under the Guaranty.

(d) Failure of the Borrower to deliver, or cause to be delivered, any of the foregoing financial statements, certificates and information within ten (10) Business Days of written notice from Lender to Borrower shall constitute an immediate Event of Default."

(c) Updated Appraisals. Section 10.5(c) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"(c) Lender shall have the right to obtain an updated Appraisal of the Property from time to time, at the Borrower's cost and expense, but not more than three (3) times during the term of the Loan unless (i) Borrower fails to satisfy the DSC Covenant on any Measurement Date, (ii) required as a condition to each Extension Option pursuant to Section 3.2 or (iii) an Event of Default has occurred and is continuing. Nothing contained herein shall prohibit Lender from obtaining an updated Appraisal at any other time at its own expense."

(d) Beneficial Ownership Certifications. Section 10.12 of the Loan Agreement is hereby amended by adding the following new clause (d):

"(d) Furnish or caused to be furnished to Lender prompt written notice of any change in the information provided in the most recently delivered Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein."

(e) DSC Covenants; LTV Covenants. Section 11.9 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"Financial Covenants. The Borrower covenants and agrees that:

(a) Loan to Value. At all times (i) during the Initial Term of the Loan, the Borrower will not permit the unpaid principal balance of the Loan to exceed sixty-five percent (65%) of the Appraised Value of the Property, and (ii) during each Extended Term of the Loan, the Borrower will not permit the unpaid principal balance of the Loan to exceed fifty-five percent (55%) of the Appraised Value of the Property (the "LTV Covenant"). If at any time the LTV Covenant is not satisfied, then Borrower shall not be in breach of such covenant unless Lender has given Borrower notice of such deficiency and Borrower has failed, within thirty (30) days thereafter, either (i) to pay down the Loan to a sufficient extent so as to eliminate any such deficiency (the "Optional Principal Prepayment Amount"), together with payment of any applicable prepayment premium or like charges (including any breakage costs for the early or partial termination of any Hedging Contract) or (ii) to deposit cash collateral into an account at Lender (the "Cash Collateral Account") in an amount equal to the Optional Principal Prepayment Amount and execute a pledge and security agreement in favor of Lender, in form and substance satisfactory to Lender, pledging the Cash Collateral Account to Lender as additional security for the Loan. Lender may test the LTV Covenant, and require a principal paydown or cash collateral, only if Borrower shall fail to satisfy the DSC Covenant or at any time during the continuance of an Event of Default. If on any subsequent test date Borrower satisfies the LTV Covenant then, absent an Event of Default, any sums held in the Cash Collateral Account shall be released to Borrower.

(b) Debt Service Coverage. As of December 31, 2023 and as of each Measurement Date thereafter, the Borrower will maintain a Debt Service Coverage Ratio of not less than 1.40:1.00 (the "DSC Covenant"); provided that Borrower shall not be in breach of the foregoing covenant unless Lender has given Borrower notice of such deficiency and Borrower has failed, within thirty (30) days thereafter, at Borrower's election, (i) to pay down the Loan to a sufficient extent so as to eliminate any such deficiency (the "DSC Deficiency"), together with payment of any applicable prepayment premium or like charges (including any breakage costs for the early or partial termination of any Hedging Contract), or (ii) to deposit with Lender cash collateral in the amount of the DSC Deficiency, which cash collateral shall be pledged to Lender pursuant to a pledge and security agreement in form and substance reasonably satisfactory to Lender (and shall be released to Borrower once the Property again satisfies the DSC Covenant). In the absence of an Event of Default, Lender will not test the foregoing covenant except on each Measurement Date. Borrower shall submit to Lender a signed statement certifying whether Borrower complies with the DSC Covenant as and when required by Section 10.2(a) hereof; provided that the determinations of Borrower in such compliance certificate shall not be binding on Lender and Lender may use its own methodology and sources in a commercially reasonable manner to verify Borrower's compliance with such covenant, in which case the determinations of Lender shall be deemed conclusive absent manifest error."

(f) Other Special Covenants. In Section 11.11(b), the words "Nantucket Island Resorts LLC ('NIR'), which is the sole member of Borrower" are hereby replaced with "Nantucket Holdings LLC, which is an affiliate of Borrower".

(g) Interest Rate Protection Agreement. The following provisions are hereby added to the Loan Agreement as new Section 11.13:

"11.13 Interest Rate Protection Agreement. No later than October 16, 2023, Borrower shall enter into an interest rate swap agreement (together with all schedules and confirmations thereof, and any renewal or replacement thereof, an "Interest Rate Protection Agreement") for the Initial Term. Any such Interest Rate Protection Agreement required or permitted under this Agreement shall be upon and subject to the following terms and conditions:

(a) The Interest Rate Protection Agreement shall be in form and substance satisfactory to Lender in its reasonable discretion and shall have a notional amount equal to the then outstanding balance of the Loan and with a Counterparty reasonably acceptable to Lender having a Minimum Counterparty Rating (except that any Counterparty which is Lender or an Affiliate of Lender shall be deemed to be reasonably acceptable to Lender and shall not be required to have the Minimum Counterparty Rating), and shall effectively swap the Daily Simple SOFR rate for a one month period for a fixed rate of interest for the entire term of the Loan. Lender agrees to price any such swap offered by it at 15 basis points over the quoted swap rate. The obligations of Borrower under any Interest Rate Protection Agreements (other than any Lender Interest Rate Protection Agreements) shall not be secured by or encumber any of the collateral securing Borrower's obligations under the Loan Documents and shall be non-recourse to Borrower. The obligations of Borrower under any Lender Interest Rate Protection Agreement shall be secured *pari passu* solely by the Mortgage and other collateral for the Loan and all sums which may become due and payable by Borrower to the Lender Counterparty thereunder, in accordance with the terms and provisions of such Lender Interest Rate Protection Agreement, including in connection with any termination thereof, shall be payable pursuant to this Agreement. Promptly upon obtaining any Interest Rate Protection Agreement, Borrower shall deliver the same to Lender.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Protection Agreement. Borrower shall take all action reasonably requested by Lender to enforce Lender's rights under the Interest Rate Protection Agreements in the event of a default by Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder. Borrower shall not (i) without the prior written consent of Lender, modify, amend or supplement the terms of the Interest Rate Protection Agreement, (ii) without the prior written consent of Lender, cause the termination of the Interest Rate Protection Agreement prior to its stated maturity date, (iii) without the prior written consent of Lender, waive or release any obligation of the Counterparty (or any successor or substitute party to the Interest Rate Protection Agreement) under the Interest Rate Protection Agreement, (iv) without the prior written consent of Lender, consent or agree to any act or omission to act on the part of the Counterparty (or any successor or substitute party to the Interest Rate Protection Agreement) which, without such consent or agreement, would constitute a default under the Interest Rate Protection Agreement, (v) fail to exercise promptly and diligently each and every material right which it may have under the Interest Rate Protection Agreement, (vi) take or omit to take any action or suffer or permit any action to be omitted or taken, the taking or omission of which would result in any right of offset against sums payable under the Interest Rate Protection Agreement or any defense by the Counterparty (or any successor or substitute party to the Interest Rate Protection Agreement) to payment or (vii) fail to give prompt notice to Lender of any notice of default given by or to Borrower under or with respect to the Interest Rate Protection Agreement, together with a complete copy of such notice.

(c) Borrower shall collaterally assign to Lender, pursuant to the Assignment of Interest Rate Protection Agreement, all of its right, title and interest to receive any and all payments under the Interest Rate Protection Agreement (and any related guarantee, if any) and shall deliver to Lender an executed counterpart of such Interest Rate Protection Agreement, notify the Counterparty of such collateral assignment and obtain the agreement (either in such Interest Rate Protection Agreement or by separate instrument) of such Counterparty to make any payments to become payable under or pursuant to the Agreement directly to Lender until such time as the Assignment of Interest Rate Protection Agreement is terminated or otherwise canceled. At such time as the Loan is repaid in full, all of Lender's right, title and interest in the Interest Rate Protection Agreement as assignee of Borrower's interest shall terminate and Lender shall execute and deliver at Borrower's sole cost and expense, such documents as may be required to evidence Lender's release of the Interest Rate Protection Agreements and to notify the Counterparty of such release. If Lender receives any payments under the Interest Rate Protection Agreement (other than a payment by reason of a termination event or any other payment during the existence of an Event of Default), Lender shall apply the same to installment of principal and interest payable on the Loan on the next succeeding Interest Payment Date. If Lender receives any payments under the Interest Rate Protection Agreement during the existence of an Event of Default or by reason of a termination event under the Interest Rate Protection Agreement, Lender shall have the right to hold the same, to deposit the same in a cash collateral account as additional security for the Loan or to apply same to any portion of the Obligations in any order it desires or, if the Interest Rate Protection Agreement has been partially or wholly terminated, to apply same to the cost of acquiring another interest rate protection agreement in form and substance, and from a counterparty, satisfactory to Lender in all respects.

(d) If, for any reason, the Counterparty's rating shall fall below the Minimum Counterparty Rating, Borrower shall within ten (10) Business Days following receipt of notice thereof from Lender or any other Person, procure a new interest rate swap from a counterparty having a rating at least equal to the Minimum Counterparty Rating in substantially the same form of the Interest

Rate Protection Agreements and shall pledge same to Lender pursuant to an assignment of interest rate protection agreement in substantially the same form of the Assignment of Interest Rate Protection Agreement or such other assignment form as is then generally utilized by Lender and accompanied by an opinion letter from counsel to such new Counterparty in form and substance reasonably satisfactory to Lender. The provisions of this subsection (d) shall not be applicable if the Counterparty is Lender or an Affiliate of Lender.

(e) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Protection Agreement as and when required hereunder, Lender may purchase the Interest Rate Protection Agreements and the cost incurred by Lender in purchasing the Interest Rate Protection Agreements shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date which is ten (10) days following the date Borrower is requested in writing to pay such cost incurred by Lender until such cost is paid to Lender."

(h) Cure of Guarantor Defaults. Section 12.1 of the Loan Agreement is hereby amended by adding to the end thereof:

> "Notwithstanding anything to the contrary contained in this Section 12.1, the occurrence of any such an Event of Default solely with respect to a Guarantor may be cured by Borrower causing one or more guarantors meeting the requirements of Section 20 of the Guaranty to deliver to Lender required replacement guaranty(ies) and environmental indemnity(ies) substantially in the form of the Guaranty and Indemnity Agreement delivered on the date hereof within thirty (30) days of the occurrence of such default, breach or failure."

(i) Borrower's Notice Address. The notice address for Borrower set forth in Section 22 of the Loan Agreement is hereby replaced by the following:

If to the Borrower:

c/o New England Development
75 Park Plaza, 3rd Floor
Boston, Massachusetts 02116
Attn: Kenneth A. Leibowitz

With a copy to
(if prior to May 1, 2024):

Goulston & Storrs, PC
400 Atlantic Avenue
Boston, MA 02110
Attn: Phillip G. Levy, Esquire

With a copy to
(if May 1, 2024 or after):

Goulston & Storrs, PC
One Post Office Square
Boston, MA 02109
Attn: Phillip G. Levy, Esquire

(j) Partial Recourse Events. Section 34.1 of the Loan Agreement is hereby amended by replacing clauses (1) through (8) of the definition of "Partial Recourse Events" with the following:

"(1) fraud or intentional misrepresentation or any intentional failure to disclose a material fact by Borrower or Guarantor in connection with the Loan;

(2) the willful misconduct of Borrower or Guarantor in connection with the Loan or the Property;

(3) the commission of a criminal act by Borrower or Guarantor that results in any seizure or forfeiture of the Property or any other Collateral for the Loan, or any material portion thereof, or Borrower's interest therein;

(4) material physical waste to the Property caused by the intentional acts or intentional omissions of Borrower or Guarantor and/or the removal or disposal of any portion of the Property after an Event of Default by Borrower or Guarantor; provided, however, that the failure of Borrower to repair or maintain, or to pay any expense in connection with the repair or maintenance of, all or any portion of the Property shall not constitute waste for purposes of this clause if (x) there is insufficient cash flow from the operation of the Property to pay for such repairs or maintenance, (y) Lender does not make cash flow (if any) from the Property available to pay for such repairs or maintenance, to the extent funds are on deposit for such purpose in an account held at or controlled by Lender and Lender's access to such funds was not restrained in any manner by acts of Borrower or Guarantor or (z) Lender does not make proceeds of the Loan available to pay such expenses when required to do so under the terms of the Loan Documents;

(5) the misapplication, misappropriation or conversion by Borrower in violation of the Loan Documents of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Property or (B) any compensation, awards, recoveries or other amounts received in connection with a condemnation of all or a portion of the Property in each case to the extent of such misapplication, misappropriation or conversion;

(6) Distributions by Borrower made in violation of the terms of the Loan Documents;

(7) any security deposits collected or held by Borrower not delivered to Lender upon foreclosure of the Mortgage (or similar sale pursuant to the terms thereof) or an action or conveyance in lieu thereof, except to the extent previously applied in accordance with the terms of the related Lease;

(8) Borrower's failure to pay any Taxes or Other Charges, charges for labor or materials or any other charges that can create liens on any portion of the Property except (A) to the extent that the revenue from the Property is insufficient to pay such amounts, (B) where sufficient amounts were deposited with Lender as reserves for the purpose of paying Taxes or Other Charges and Lender elects not to apply such funds toward, or disburse such funds to Borrower for, payment of such Taxes or Other Charges owed and Lender's access to such funds was not restrained in any manner by acts of Borrower or Guarantor, (C) where Borrower is contesting the validity or amount of the Taxes or Other Charges, or charges for labor or materials owed and such contest is being conducted strictly in accordance with the terms of the Loan Documents, or (D) Lender does not make proceeds of the Loan available to pay such expenses when required to do so under the terms of the Loan Documents;

(9) Borrower's failure to maintain insurance as required by this Agreement except (A) to the extent that the revenue from the Property is insufficient to pay the insurance premiums relating thereto, (B) where sufficient amounts were deposited with Lender as reserves for the purpose of paying such insurance premiums and Lender elects not to apply such funds toward, or disburse such funds to Borrower for, payment of the same and Lender's access to such funds was not restrained in any manner by acts of Borrower or Guarantor, or (C) Lender does not make proceeds of the Loan available to pay such expenses when required to do so under the terms of the Loan Documents;

(10) any act or omission taken in bad faith by Borrower or Guarantor which hinders, delays or interferes with the exercise by Lender of any of its rights or remedies under the Loan Documents after the occurrence and during the continuance of an Event of Default; and/or

(11) Borrower's failure to obtain Lender's prior written consent to the extent such consent is required by the Loan Documents to any transfer, sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or other disposition (including by way of division), whether voluntarily, involuntarily or by operation of law or otherwise, of any interest in the

Property or in Borrower (a "Transfer"), other than a Full Recourse Transfer (defined below)."

(k) Full Recourse Events. Section 34.2 of the Loan Agreement is hereby amended by replacing clauses (i) through (iv) of the definition of "Full Recourse Events" with the following:

"(1) Borrower's voluntary grant of a lien or other security interest secured by the Property or the direct or indirect interests in Borrower to secure indebtedness for borrowed money unless permitted under the terms of the Loan Agreement or any other Loan Document or otherwise consented to by Lender in writing;

(2) Borrower fails to obtain Lender's prior written consent to the extent required by the Loan Documents to any voluntary Transfer (A) of fee title to the Property or any portion thereof, or (B) of any direct or indirect ownership interests in Borrower, or (C) which results in any division of a Borrower or Guarantor (each of the foregoing (A), (B) and (C), a "Full Recourse Transfer");

(3) Borrower filing a voluntary petition under any Debtor Relief Law;

(4) the filing of an involuntary petition against Borrower under any Debtor Relief Law by Guarantor or any Affiliate of Borrower or Guarantor (collectively, a "Borrower Party") or in which Borrower or any Borrower Party colludes with, or solicits or causes to be solicited, petitioning creditors for any involuntary petition against Borrower;

(5) Borrower or any Borrower Party (A) files an answer consenting to any involuntary petition filed against Borrower under any Debtor Relief Law, (B) joins in or aids any creditors in the commencement of any involuntary petition filed against Borrower under any Debtor Relief Law, or (C) solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower under any Debtor Relief Law;

(6) Borrower or Guarantor consents to an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property, unless requested by or with the consent of Lender;

(7) Borrower (a) making an assignment for the benefit of creditors (other than to, or at the request of Lender in connection with a workout of the Loan), or (b) admitting, in writing (other than to Lender and its direct and indirect investors) or in any legal proceeding, its insolvency or inability to pay its debts as they become due (provided, that,

if required by applicable laws or in a court proceeding, there shall be no liability under this clause (7) for the making of any truthful statements by Borrower or Guarantor regarding Borrower's financial status or its ability to pay its obligations as the same become due, including, without limitation, by affidavit or declaration); and/or

(8) a breach by Borrower of the covenants set forth in Section 9.1(e) or 11.11(b) of this Agreement, and such breach is cited in a written decision by a bankruptcy court as a material factor in ordering the substantive consolidation of Borrower's assets with those of another Person in a bankruptcy proceeding.

Notwithstanding anything to the contrary contained herein, from and after the Turnover Date, Guarantor shall have no liability under the Guaranty to Lender for a Partial Recourse Event or Full Recourse Event to the extent that such Partial Recourse Event or Full Recourse Event was caused by actions, conditions or events (A) that first occurred (as opposed to being first discovered) after the Turnover Date and (B) which were not a result of the act, direction or directive of Borrower, Guarantor or any of their respective Affiliates (as applicable). Further, Guarantor shall have no liability under the Guaranty to Lender to the extent that such Partial Recourse Event or Full Recourse Event was caused by actions, conditions or events taken at the express, written request of, or expressly consented to in writing by, Lender. As used herein, "Turnover Date" means the earlier to occur of (A) the date on which Lender or its designee acquires record title to the Property by acceptance by Lender or such designee, in its sole discretion, of a deed-in-lieu of foreclosure and (B) the date on which record title to the Property is transferred pursuant to the final completion of a foreclosure of the Mortgage to a Person that is not an Affiliate of Borrower or Guarantor, free of possession, occupancy or claims to possession or occupancy by Borrower, Guarantor or any Affiliate of Borrower or Guarantor."

(l) Definitions.

(i) Schedule 1 to the Loan Agreement is hereby amended by amending and restating the definitions for the terms below as follows:

"Debt Service Charges. (a) For any Calculation Period through and including December 31, 2027, the principal and interest payments which would be payable by the Borrower on the unpaid principal balance of the Loan over a twelve (12) month period, to be calculated (i) based on a twenty-five (25) year amortization schedule and (ii) using an annual rate of interest equal to the Swap Rate; and (b) for each Calculation Period thereafter, including any calculation of the Debt Service Coverage Ratio in connection with the extension of the term of the Loan, the annual principal and interest payments which would be payable by the Borrower on a hypothetical loan equal to the unpaid principal balance of the Loan on the applicable Measurement Date based on a 25-year amortization schedule and an annual rate of interest equal to the greater of (i) the Swap Rate then in effect, (ii) 8.50% or (iii) 2.80% over the 10-year U.S. Treasury Rate then in effect."

"Swap Rate. The annual fixed rate of interest payable under any Interest Rate Protection Agreement entered into by Borrower pursuant to Section 11.13 hereof, plus the Applicable SOFR Margin."

(ii) Schedule 1 to the Loan Agreement is hereby amended by adding the following new definitions, in the correct alphabetical order with the existing definitions:

"Beneficial Ownership Certification means, with respect to Borrower, a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation, which certification is substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association or such other form satisfactory to Lender."

"Beneficial Ownership Regulation means 31 C.F.R. § 1010.230."

"Counterparty. Shall mean each counterparty to, or issuer of, any Interest Rate Protection Agreement other than Borrower or an Affiliate of Borrower."

"Daily Simple SOFR. As defined in the Interest Rate Addendum attached to the Note, as amended."

"Debtor Relief Laws means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect."

"DSC Deficiency. As defined in Section 11.9(b)."

"Interest Payment Date. As defined in the Interest Rate Addendum attached to the Note, as amended."

"Interest Rate Protection Agreement. As defined in Section 11.13."

"Lender Interest Rate Protection Agreement. Collectively, each Interest Rate Protection Agreement (if any) in which Lender or any Affiliate of Lender is the Counterparty."

"Minimum Counterparty Rating. A credit rating from Standard & Poor's Rating Services and Fitch, Inc. of a least ["A-"] and from Moody's Investor Services, Inc. of at least ["A3"]."

"Other Charges. All ground rents, maintenance charges, impositions other than Property Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof, respectively and as applicable."

"Taxes. All present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Government Authority, including any interest, additions to tax or penalties applicable thereto."

(m) Organizational Chart. Schedule 2 to the Loan Agreement is hereby deleted in its entirety and replaced with Schedule 2 attached hereto.

(n) Other Amendments.

(i) Federal Reserve Bank Pledge. Section 20.5 of the Loan Agreement (entitled "Pledge by Lender") is hereby amended by adding the following language at the end of the second sentence thereof: "or substitute any such pledgee for Lender as a party hereto."

(ii) Electronic Signatures. Section 28 of the Loan Agreement (entitled "Counterparts") is replaced in its entirety with the following:

"Counterparts; Integration; Effectiveness; Electronic Execution. This Agreement and any amendment hereof may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Each of the parties hereto hereby expressly (i) consents to do business electronically in connection with this Agreement and the transactions contemplated hereby and (ii) acknowledges and agrees that delivery of an executed counterpart of a signature page of this Agreement, the Note, and any and each other Loan Document and any amendment thereto, in any event (whether or not expressly provided therein), by telecopy, emailed .pdf, .tif, or any other electronic means that reproduces an image of the actual manually executed signature page shall be effective as delivery of a manually executed (and, as may be applicable, notarized) counterpart of any and each such Loan Document or amendment thereto. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic association of signatures and records on electronic platforms, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act or the Uniform Commercial Code, each as may be amended and in effect from time to time, and the parties hereto hereby waive any objection to the contrary; provided that (x) nothing herein shall require the Lender to accept electronic signature counterparts in any form or format and (y) Lender reserves the right to require, at any time and at its sole discretion, the delivery of manually executed counterpart signature pages to any Loan Document or amendment thereto and the parties hereto agree to promptly deliver such manually executed counterpart signature pages (including, without limitation, with respect to any Security Document which is required by any applicable Government Authority to be filed, recorded, or otherwise registered with a manually executed and, where applicable, notarized original). Each of the parties hereto waives any defense or right to contest the validity, admissibility, or enforceability of this Agreement or the transactions contemplated hereby (and any and each related execution and delivery of any Loan Document or amendment thereto) based solely on the lack of paper originals (including any manually executed signatures hereto or thereto)."

(iii) Supported QFCs. The following new Section 38 is hereby added to the end of the Loan Agreement:

"38. ACKNOWLEDGEMENT REGARDING ANY SUPPORTED QFCS. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for swap agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the Commonwealth of Massachusetts and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 38, the following terms have the following meanings:

'BHC Act Affiliate' of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

'Covered Entity' means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

'Default Right' has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

'QFC' has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D)."

5. Amendments to Mortgage. Section 5.12.2 of the Mortgage is hereby deleted without substitution therefor.

6. Effect of Amendment; Modifications to Loan Documents; Acknowledgments by Borrower and Guarantor. Each of Lender, Borrower, and Guarantor (by its acknowledgment

below) hereby acknowledges, confirms, and agrees that, from and after the Amendment Effective Date:

(a) Any and all references to the "*Loan Agreement*" (however defined or described) in any Loan Document, and in any other document or instrument incidental thereto, will mean a reference to the Loan Agreement as amended pursuant to this Amendment (and as the Loan Agreement from time to time may be further amended, restated, supplemented or otherwise modified), and the Loan Documents are hereby amended accordingly, *mutatis mutandis*. Without limiting the generality of the foregoing, each reference in the Loan Agreement to "this Agreement", "herein", "hereinafter", "hereto", "hereof", and words of similar import will mean, from and after the Amendment Effective Date, a reference to the Loan Agreement (as hereby amended and modified).

(b) Any and all references to the "*Note*" (however defined or described) in any Loan Document, and in any other document or instrument incidental thereto, will mean a reference to the Note as amended pursuant to this Amendment (and as the Note from time to time may be further amended, restated, supplemented or otherwise modified), and the Loan Documents are hereby amended accordingly, *mutatis mutandis*. Without limiting the generality of the foregoing, each reference in the Note to "this Note", "herein", "hereinafter", "hereto", "hereof", and words of similar import will mean, from and after the Amendment Effective Date, a reference to the Note (as hereby amended and modified).

(c) Any and all references to the "*Mortgage*" (however defined or described) in any Loan Document, and in any other document or instrument incidental thereto, will mean a reference to the Mortgage as amended pursuant to this Amendment (and as the Mortgage from time to time may be further amended, restated, supplemented or otherwise modified), and the Loan Documents are hereby amended accordingly, *mutatis mutandis*. Without limiting the generality of the foregoing, each reference in the Mortgage to "this Mortgage", "herein", "hereinafter", "hereto", "hereof", and words of similar import will mean, from and after the Amendment Effective Date, a reference to the Mortgage (as hereby amended and modified).

(d) Except as expressly amended hereby, the terms and conditions of the Loan Agreement and the other Loan Documents, respectively, shall remain in full force and effect, and in all respects are hereby ratified, confirmed, and reaffirmed.

(e) The execution, delivery, and effectiveness of this Amendment shall not operate as a waiver of any right, power, or remedy of Lender under any of the Loan Documents, nor constitute a waiver of any provision of the Loan Documents or in any way limit, impair or otherwise affect the rights and remedies of the Lender under the Loan Documents.

(f) Each party hereto acknowledges and agrees that, on and after the Amendment Effective Date, this Amendment will constitute a Loan Document for all purposes thereunder.

7. Ratification and Reaffirmation of Loan Documents. As of the Amendment Effective Date, Borrower and Guarantor (by its acknowledgment below) each hereby: (a) approves and consents to all of the terms and conditions of this Amendment and transactions contemplated hereby; (b) ratifies, confirms, and reaffirms all of the terms and conditions of the Loan Documents to which such Person is a party; (c) acknowledges, confirms, and agrees that the Loan Documents to which such Person is a party shall remain in full force and effect, on a continuous basis, as amended, modified and supplemented by this Amendment and shall in no way be impaired or limited by the execution and delivery of this Amendment or the transactions contemplated hereby or thereby; (d) reaffirms each lien and security interest granted by each Loan Party pursuant to the Security Documents, respectively and as applicable, all of which obligations and liens and security interests shall remain in full force and effect after giving effect to this Amendment. Nothing contained in this Amendment shall be deemed or construed as substitution or novation of (x) the Note, (y) the indebtedness and obligations outstanding under the Loan Agreement, the Note, and the other Loan Documents, or (z) any other Obligations (including any Hedging Obligations).

8. No Other Agreements; No Course of Dealing; Reservation of Rights. Lender, Borrower, and Guarantor (by its acknowledgment below) each hereby acknowledges and agrees that (a) the agreements of Lender set forth herein and in the other Amendment Documents are limited solely to the matters specifically set forth in this Amendment; (b) the execution of this Amendment and acceptance of any documents related hereto or thereto shall not be deemed to be a waiver of any breach, Default or Event of Default under the Loan Documents, whether or not known to Lender and whether or not existing on the date of this Amendment; (c) no other agreements, consents, or waivers are implied or agreed to be given in the future with respect to anything other than the strict application without waiver of all applicable provisions of the Loan Agreement and the other Loan Documents, notwithstanding any description or disclosure of any contemplated, planned, or anticipated future transactions, events, or occurrences; and (d) at no time shall any prior or subsequent course of conduct by Borrower or Lender directly or indirectly limit, impair, or otherwise adversely affect any of Lender's rights, interests, or remedies in connection with the Loan and the Loan Documents or obligate Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan Document or any amendment to any term or condition of any Loan Document. Without limiting the generality of the foregoing, Lender expressly continues to reserve, and does not waive, all of its rights under the Loan Documents and applicable law.

9. No Actions, Claims, Etc; Release of Claims. As of the Amendment Effective Date, Borrower and Guarantor (by its acknowledgment below) each hereby acknowledges and confirms that it has no knowledge of any actions, causes of action, claims, counterclaims, offsets, demands, damages, and liabilities of whatever kind or nature, in law or in equity, against the Lender or the Lender's officers, employees, representatives, agents, advisors, consultants, counsel or directors arising from any action by such Persons, or failure of such Persons to act on or prior to the date hereof. In consideration of the Lender's agreements contained in this Amendment, as of the Amendment Effective Date Borrower and Guarantor (by its acknowledgment below) each hereby irrevocably releases and forever discharges the Lender and Lender's affiliates, subsidiaries, successors, assigns, directors, officers, employees, representatives, agents, advisors, consultants and counsel (each, a "Released Person") of and from any and all claims, suits, actions, investigations, proceedings, demands or damages,

whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, common law or otherwise of any kind or character, known or unknown, which such Loan Party ever had or now has against the Lender or any other Released Person which relates, directly or indirectly, to any acts or omissions of Lender or any other Released Person on or prior to the date hereof.

10. Representations and Warranties. As of the Amendment Effective Date, Borrower and Guarantor (by its acknowledgment below) each represents and warrants that:

(a) The representations and warranties of each Loan Party set forth in the Loan Agreement (including, without limitation, as set forth in Section 9 thereof) and in each other Loan Document, respectively and as applicable, are true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "material adverse effect" are true and correct in all respects as so qualified) on and as of the Amendment Effective Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they are true and correct as of such earlier date.

(b) No Default or Event of Default exists or will result from the execution of this Amendment.

(c) Each Loan Party has all requisite power and authority to execute, deliver and perform its respective obligations under this Amendment. The execution, delivery and performance of this Amendment (i) are within such Loan Party's limited liability company or other powers, (ii) have been duly authorized by all necessary limited liability company or other organizational action, and (iii) do not (A) contravene the terms of any of such Person's Organizational Documents, (B) violate any applicable law, or (C) conflict with or result in any breach or contravention of, or the creation of any lien or security interest under, (x) any contractual obligation to which such Person is a party or affecting such Person or the properties of such Person or (y) any order, injunction, writ or decree of any Government Authority or any arbitral award to which such Person or its property is subject.

(d) This Amendment has been duly executed and delivered by each Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency and other creditors' rights laws and by general principles of equity.

(e) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Government Authority or any other Person is necessary or required in connection with the execution, delivery, or performance by, or enforcement against, any Loan Party of this Amendment, except for the approvals, consents, exemptions, authorizations, actions, notices, and filings which have been duly obtained, taken, given or made and are in full force and effect.

(f) None of the Organizational Documents of any Loan Party have been modified or amended from the documents most recently delivered to the Lender.

(g) Each of the Loan Parties have consulted with independent legal counsel of such Person's selection in connection with this Amendment and are not relying on any representations or warranties of Lender or their counsel in entering into this Amendment.

11. Conditions Precedent. This Amendment will be effective on the date as of which Lender has confirmed in writing (which may be by electronic mail) the satisfaction of the following conditions precedent by no later than 12:00 p.m., New York time, on September 22, 2023 (with the date, if at all, by which such conditions have been satisfied or waived, and subject to the further provisions below, being referred to herein as, the "Amendment Effective Date"), failing which this Amendment shall be null and void at the option of Lender:

(a) Approval and Execution of Amendment. Lender has received this Amendment, duly executed and delivered by Borrower, Guarantor and Lender.

(b) No Default or Event of Default. No Default or Event of Default (x) exists at the time of the execution and delivery of this Amendment or (y) would result from the execution of this Amendment or the transactions contemplated herein.

(c) Opinions. Lender has received such opinions of counsel to Borrower and Guarantor as Lender requires.

(d) Officer's Certificates; Resolutions. Lender has received a certificate dated the date hereof, signed by a manager or authorized officer of each Loan Party, certifying (i) the organizational documents of such Loan Party and documents or certificates evidencing such Loan Party's good standing in its state of organization and, in the case of Borrower, documents or certificates evidencing Borrower's good standing in the Commonwealth of Massachusetts with respect to its qualification to transact business in the Commonwealth of Massachusetts; and (ii) resolutions duly adopted by the managers, board of directors, members or parties of each Loan Party, as applicable, authorizing the execution and delivery of this Amendment and all other documents required to be delivered in connection herewith, and all transactions contemplated herein.

(e) Title; Date-Down Endorsement. Borrower will cause to be delivered to Lender, at Borrower's sole cost and expense, a date-down endorsement to the loan policy of title insurance issued by Fidelity National Title Insurance Company (Policy No. 27307-16-0038KC-FN) which shall (i) insure against any intervening liens or encumbrances since the date of the most recent date-down endorsement delivered to Lender, (ii) insure that all real estate taxes and assessments on the Property are currently paid, and (iii) date down the survey coverage under the existing title policy.

(f) Loan Expenses. The Lender has received satisfactory evidence that all fees, expenses, and disbursements required to be paid in connection with this Amendment (including fees, disbursements and other charges of counsel to the Lender) have been paid in full; provided such fees and expenses may be paid by the Closing Advance in accordance with Section 12 below.

(g) Commitment Fee. Lender has received the commitment fee in the amount of $71,000.00; provided such Commitment Fee may be paid by the Closing Advance in accordance with Section 12 below.

12. Disbursement Authorization. Borrower hereby authorizes Lender to disburse the Closing Advance as follows: (i) $81,559.00 shall be applied to Lender's fees as set forth in Exhibit B attached hereto, and (ii) the balance of $91,539.00 shall be deposited in the operating account for the Property (account # ending 0993) with Lender.

13. Governing Law. THIS AMENDMENT AND THE OTHER AMENDMENT DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE COMMONWEALTH OF MASSACHUSETTS.

14. Miscellaneous. Lender, Borrower, and Guarantor (by its acknowledgment below) each hereby further acknowledges and agrees as follows:

(a) The terms and provisions of this Amendment modify and supersede all inconsistent terms and provisions of the Loan Agreement and the other Loan Documents and, except as expressly amended or modified by this Amendment, the terms and provisions of the Loan Agreement and the other Loan Documents are hereby ratified, confirmed, and re-affirmed and shall continue in full force and effect.

(b) This Amendment and each of the other Amendment Documents is binding and enforceable as of the date hereof against each party hereto and its successors and permitted assigns.

(c) This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed signature page counterpart hereof by telecopy, emailed .pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic association of signatures and records on electronic platforms, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act or the Uniform Commercial Code, each as may be amended and in effect from time to time, and the parties hereto hereby waive any objection to the contrary; provided that (x) nothing herein shall require the Lender to accept electronic signature counterparts in any form or format and (y) Lender reserves the right to require, at any time and at its sole discretion, the delivery of manually executed counterpart signature pages to this Amendment and the parties hereto agree to promptly deliver such manually executed counterpart signature pages (including, without limitation, with respect to any Security Document which is required by any applicable Government Authority to be filed, recorded, or otherwise registered with a manually executed and, where applicable, notarized original). Each of the parties hereto waives any defense or right to contest the validity, admissibility, or enforceability of this Agreement or the transactions contemplated hereby based solely on the lack of paper originals (including any manually executed signatures hereto or thereto).

(d) If any provision of this Amendment is held to be illegal, invalid, or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Amendment shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid, or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid, or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(e) Borrower shall pay on demand all out of pocket costs and expenses of Lender, including, without limitation, reasonable attorneys' fees and expenses, in connection with this Amendment.

(f) This Amendment incorporates all discussions and negotiations by and among Borrower, Guarantor, and Lender, either express or implied, concerning the matters included herein, any custom, usage, or course of dealings to the contrary notwithstanding. No such discussions, negotiations, custom, usage, or course of dealings shall limit, modify, or otherwise affect the provisions hereof. No modification, amendment, or waiver of any provision of this Amendment, or of any provision of any other agreement between any Borrower, Guarantor, or Lender, shall be effective unless executed in writing by the party to be charged with such modification, amendment and waiver, and if such party shall be Lender, then by a duly authorized officer thereof.

(g) The captions of this Amendment are for convenience purposes only, and shall not be used in construing the intent of the parties to this Amendment.

(h) In the event of any inconsistency between the provisions of this Amendment and the Loan Documents, the provisions of this Amendment shall govern and control.

(i) This Amendment to the extent it affects the Note shall be considered an allonge to such Note and is hereby firmly affixed to and made part of such Note. If for any reason this Amendment is not affixed to the Note, the parties hereto agree that this Amendment shall remain a valid amendment to the Note and the terms of this Amendment shall remain binding on all parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Lender and the Borrower have executed this Amendment as of the day and year first above written.

LENDER:

CITIZENS BANK, N.A.,
a national banking association

By: ______________________
Name: Christopher F. Robie
Title: Senior Vice President

[Signatures continue on following page]

BORROWER:

WAUWINET INN LLC,
a Delaware limited liability company

By: NED Manager LLC,
a Delaware limited liability company,
its Manager

By: Douglass E Karp
Name: Douglass E. Karp
Title: Manager

ACKNOWLEDGMENT BY GUARANTOR:

The undersigned Guarantor hereby (a) consents to the foregoing Amendment, (b) confirms and reaffirms its obligations under its Guaranty in its entirety, (c) confirms that the representations and warranties set forth in its Guaranty remain true and correct in all material respects, (d) reaffirms that Guarantor remains obligated to the Lender under its Guaranty without defense, counterclaim, or offset, and (e) without limiting the foregoing, expressly joins Borrower in making the representations, warranties, covenants, and agreements in favor of Lender which are set forth in the foregoing Amendment as being applicable on account of the within acknowledgment by Guarantor.

Acknowledged and agreed to by Guarantor as of the day and year first above written.

"GUARANTOR"

NED EQUITY HOLDINGS LLC,
a Delaware limited liability company

By: NED Manager LLC,
a Delaware limited liability company,
its Manager

By: Douglass E Karp
Name: Douglass E. Karp
Title: Manager

EXHIBIT A

Interest Rate Addendum
(Daily Simple SOFR)

1. **Certain Definitions**. All capitalized terms used herein and not otherwise defined below shall have the same meaning as set forth in the Loan Agreement.

"ABR Loan" means any loan for the period(s) when the rate of interest applicable to such Loan is calculated by reference to the Alternate Base Rate.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (1) the Prime Rate in effect on such day, (2) the Federal Funds Rate in effect on such day plus 0.50% per annum and (3) Daily Simple SOFR on such day plus 1.00% per annum, provided that the Alternate Base Rate shall at no time be less than the Floor. If Lender shall have determined (which determination shall be conclusive absent clearly manifest error) that it is unable to ascertain the Federal Funds Rate or Daily Simple SOFR for any reason, including the inability or failure of Lender to obtain sufficient quotations in accordance with the terms of the definition of the term "Federal Funds Rate", the Alternate Base Rate shall be determined without regard to clause (2) or (3), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Rate or Daily Simple SOFR, as applicable, shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Daily Simple SOFR, as applicable, respectively.

"Applicable ABR Margin" means One and 80/100 percent (1.80%).

"Applicable SOFR Margin" means Two and 80/100 percent (2.80%).

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period (or a similar or analogous period) pursuant to this Note or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "interest period" (or a similar or analogous term) pursuant to Section 4.7(d).

"Benchmark" means, initially, Daily Simple SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date has occurred with respect to Daily Simple SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 4.7(a).

"Benchmark Replacement" means with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Lender giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate and an adjustment as a replacement for the then-current Benchmark for Dollar-denominated credit facilities at such time and (b) the related Benchmark Replacement Adjustment; provided, that any such Benchmark Replacement shall be administratively feasible as determined by Lender in its reasonable discretion. If the Benchmark Replacement would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Note and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Lender giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated credit facilities at such time.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if such Benchmark is a term rate, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if such Benchmark is a term rate, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"<u>Benchmark Transition Start Date</u>" means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"<u>Benchmark Unavailability Period</u>" means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with <u>Section 4.7(a)</u> and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with <u>Section 4.7(a)</u>.

"Business Day" means any day other than a Saturday, Sunday or day on which banks in New York City, New York or Boston, Massachusetts are authorized or required by law to close.

"Conforming Changes" means, with respect to either the use or administration of the Benchmark, or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including, without limitation, changes to the definition of "Alternate Base Rate," or any similar or analogous definition, the definition of "Business Day," or any similar or analogous definition, the definition of "Interest Payment Date" or any similar or analogous definition, the addition or deletion of a concept of "interest period" or any similar or analogous definition, or the modification of the definition of "interest period" or any similar or analogous definition, the definition of "U.S. Government Securities Business Day," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment or conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that Lender decides may be appropriate in connection with the use or administration of the Benchmark or to reflect the adoption and implementation of any Benchmark Replacement or to permit the use and administration thereof by Lender in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of this Note and the other Loan Documents).

"Daily Simple SOFR" means, for any day (a "SOFR Rate Day"), a rate per annum equal to the greater of (a) SOFR for the day (such day, the "SOFR Determination Date") that is five (5) U.S. Government Securities Business Days prior to (A) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (B) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's website, and (b) the Floor. If by 5:00 p.m. (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Date, SOFR in respect of such SOFR Determination Date has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Date will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower or any other Person.

"Default Rate" means (a) when used with respect to the outstanding principal balance of any Loan, the sum of (i) the rate of interest otherwise applicable thereto plus (ii) 4.00% per annum, and (b) when used with respect to any interest, fee or other amount payable under the Loan Documents which shall not have been paid when due, the sum of (i) the Alternate Base

Rate plus (ii) the Applicable ABR Margin applicable to ABR Borrowings plus (iii) 4.00% per annum.

"Federal Funds Rate" means, for any day, a rate per annum (expressed as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average of the quotations for such day on such transactions received by Lender from three federal funds brokers of recognized standing selected by it and (c) if the Federal Funds Rate shall be less than zero percent (0.00%), such rate shall be deemed to be zero percent (0.00%) for purposes of this Note.

"Floor" means 0.00% per annum.

"Interest Payment Date" means the first (1st) Business Day of each calendar month and the Maturity Date.

"Prime Rate" means a rate per annum equal to the prime rate of interest announced from time to time by Citizens Bank, N.A. or its parent company (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes.

"Relevant Governmental Body" means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

"SOFR" means a rate equal to the secured overnight financing rate published by the SOFR Administrator on the website of the SOFR Administrator, currently at http://www.newyorkfed.org (or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time).

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Determination Date" has the meaning assigned to such term in the definition of "Daily Simple SOFR".

"SOFR Loan" means the Loan for the period(s) when the rate of interest applicable to the Loan is calculated by reference to Daily Simple SOFR in the manner set forth herein.

"SOFR Rate Day" has the meaning assigned to such term in the definition of "Daily Simple SOFR".

"Type", when used in reference to any Loan, refers to whether the rate of interest on such Loan is determined by reference to (i) Daily Simple SOFR, or (ii) the Alternate Base Rate.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association (or any successor thereto) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

2. **Interest**.

2.1 Interest Rate Generally. Interest on the outstanding principal amount of the Loan, when classified as: (i) a SOFR Loan, shall accrue at a rate per annum equal to the sum of Daily Simple SOFR as in effect from time to time plus the Applicable SOFR Margin, and be due and payable on each Interest Payment Date and on the Maturity Date, and (ii) an ABR Loan, shall accrue at a rate per annum equal to the sum of the Alternate Base Rate as in effect from time to time plus the Applicable ABR Margin, and be due and payable on each Interest Payment Date and on the Maturity Date.

2.2 Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and at such other times as may be specified herein, provided that (i) interest accrued and unpaid on past due amounts (including interest on past due interest) shall be payable on demand, and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

2.3 Computation of Interest. All interest hereunder shall be computed on the basis of a year of 360 days (or in the case of interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate, such interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year)), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on the Loan shall be computed on a daily basis based upon the outstanding principal amount of the Loan as of the applicable date of determination. The applicable Alternate Base Rate and Daily Simple SOFR shall be determined by Lender, and such determination shall be conclusive absent clearly manifest error.

2.4 Daily Simple SOFR Conforming Changes. In connection with the use or administration of Daily Simple SOFR, the Lender will have the right (in consultation with Borrower) to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Note or any other Loan Document. Lender will promptly notify the Borrower of the effectiveness of any Conforming Changes in connection with the use or administration of Daily Simple SOFR.

3. Repayments, Prepayments and Interest.

3.1 SOFR Loan; Automatic Rollover. Unless otherwise prohibited by this Note or any other Loan Document, the Loan shall be classified as a SOFR Loan at all times, subject to the limitations set forth herein. On each Interest Payment Date, the Loan shall automatically be continued as a SOFR Loan in an amount equal to the principal amount of the expiring SOFR Loan; provided, however, that during the existence of an Event of Default, Lender may require that (i) the Loan shall not be continued as or converted to a SOFR Loan and (ii) unless repaid, the Loan shall be converted to an ABR Loan on the next Interest Payment Date.

3.2 Optional Prepayments. Borrower may, upon written notice to Lender, at any time and from time to time, voluntarily prepay the Loan in whole or in part without premium or penalty (except as set forth in Section 3.3), provided that (A) such notice must be received by Lender not later than 1:00 p.m. (1) three (3) U.S. Government Securities Business Days prior to any date of prepayment of a SOFR Loan, and (2) one (1) Business Day prior to the date of prepayment of an ABR Loan and (B) each prepayment shall be in an integral multiple of $100,000 or the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and Type(s) of Loan to be prepaid. If such notice is given by Borrower, Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, provided that a notice of prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by Borrower (by written notice to Lender on or prior to the specified effective date) if such condition is not satisfied subject to Borrower's obligation to indemnify the Lender pursuant to Section 3.3. If Borrower is party to a Hedging Contract other than a rate cap which has no potential future payment obligations on the part of Borrower (including any required Interest Rate Protection Agreement), concurrently with any prepayment hereunder, Borrower shall (x) reduce the notional amount of such Hedging Contract by the amount of such prepayment, (y) pay all sums, if any, payable pursuant to such Hedging Contract with respect to such reduction and (z) provide evidence to Lender of Borrower's compliance with the foregoing clauses (x) and (y).

3.3 Compensation for Losses. In the event of (a) the payment or prepayment of any principal of any SOFR Loan other than on an Interest Payment Date whether voluntary, mandatory, automatic, by reason of acceleration (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on an Interest Payment Date (including as a result of an Event of Default), or (c) the failure to borrow, convert or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of Lender setting forth any amount or amounts that Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

4. Miscellaneous SOFR Loan Terms.

4.1 Illegality. If Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for Lender to make, maintain or fund Loans whose interest is determined by reference to SOFR or Daily Simple SOFR, or to determine or charge interest rates based upon SOFR or Daily Simple SOFR, then, upon notice thereof by Lender to the Borrower, (a) any obligation of Lender to make SOFR Loans, and any right of the Borrower to convert ABR Loans to SOFR Loans, shall be suspended, and (b) the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by Lender without reference to clause (c) of the definition of "Alternate Base Rate", in each case until Lender notifies Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, if necessary to avoid such illegality, upon demand from Lender, prepay or, if applicable, convert all SOFR Loans to ABR Loans (the interest rate on which ABR Loans of Lender shall, if necessary to avoid such illegality, be determined by the Lender without reference to clause (c) of the definition of "Alternate Base Rate"), on the Interest Payment Date therefor, if Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if Lender may not lawfully continue to maintain such SOFR Loans to such day, and (ii) if necessary to avoid such illegality, Lender shall during the period of such suspension compute the Alternate Base Rate without reference to clause (c) of the definition of "Alternate Base Rate" in each case until Lender determines that it is no longer illegal for Lender to determine or charge interest rates based upon SOFR or Daily Simple SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.3.

4.2 Inability to Determine Rates. Subject to Section 4.7 hereof, if, prior to setting the daily interest rate for a SOFR Loan:

(a) Lender determines (which determination shall be conclusive and binding absent manifest error) that "Daily Simple SOFR" cannot be determined pursuant to the definition thereof, or

(b) Lender determines that for any reason in connection with any request for a SOFR Loan or a conversion thereto that Daily Simple SOFR does not adequately and fairly reflect the cost to Lender of funding such Loan,

Lender will promptly so notify the Borrower. Upon notice thereof by Lender to Borrower, any obligation of Lender to make or maintain SOFR Loans, and any right of Borrower to convert ABR Loans to SOFR Loans shall be suspended (to the extent of the affected SOFR Loans) until Lender revokes such notice. Upon Borrower's receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of or conversion to SOFR Loans (to the extent of the affected SOFR Loans) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans immediately. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 3.3. Subject to Section 4.7 hereof, if Lender determines (which determination shall be conclusive and binding absent manifest error) that "Daily Simple SOFR" cannot be determined pursuant to the definition thereof on any given day, the interest rate on ABR Loans shall be determined by Lender without reference to clause (c) of the definition of "Alternate Base Rate" until Lender revokes such determination.

4.3 Increased Costs. If, on or after the date hereof, the adoption of any applicable law, rule or regulation or guideline (whether or not having the force of law), or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Lender with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(a) shall impose, modify or deem applicable any reserve, special deposit or similar requirement (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System of the United States) against assets of, deposits with or for the account of, or credit extended by, Lender or shall impose on Lender any other condition affecting its SOFR Loans or its obligation to make SOFR Loans; or

(b) shall impose on Lender any other condition affecting its SOFR Loans or its obligation to make SOFR Loans,

and the result of any of the foregoing is to increase the cost to Lender of making or maintaining any SOFR Loan, or to reduce the amount of any sum received or receivable by Lender under the Note with respect thereto, by an amount deemed by Lender to be material, then, within 15 days after demand by Lender, the Borrower shall pay Lender such additional amount or amounts as will compensate Lender for such increased cost or reduction, but only to the extent that Lender generally assesses such cost increases to its borrowers.

4.4 Increased Capital Costs. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other governmental authority affects or would affect the amount of capital required or expected to be maintained by Lender, or person controlling Lender, and Lender determines (in its sole and absolute discretion) that the rate of return on its or such controlling person's capital as a consequence of its commitments or the loans made by Lender is reduced to a level below that which Lender or such controlling person could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by Lender to the Borrower, the Borrower shall within 15 days after such notice pay directly to Lender additional amounts sufficient to compensate Lender or such controlling person for such reduction in rate of return, but only to the extent that Lender generally assesses such cost increases to its borrowers. A statement of Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, Lender may use any method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable.

4.5 Taxes. All payments by the Borrower of principal of, and interest on, the Loan and all other amounts payable hereunder or under any other Loan Document shall be made free and clear of and without deduction for any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, but excluding franchise taxes and taxes imposed on or measured Lender's net income or receipts (such non-excluded items being called "Taxes"). In the event that any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Borrower will

(a) pay directly to the relevant authority the full amount required to be so withheld or deducted;

(b) promptly forward to Lender an official receipt or other documentation satisfactory to Lender evidencing such payment to such authority; and

(c) pay to the Lender such additional amount or amounts as is necessary to ensure that the net amount actually received by Lender will equal the full amount Lender would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against Lender with respect to any payment received by Lender hereunder, Lender may pay such Taxes and the Borrower will promptly pay such additional amount (including any penalties, interest or expenses) as is necessary in order that the net amount received by Lender after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount Lender would have received had not such Taxes been asserted.

If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to Lender the required receipts or other required documentary evidence, the Borrower shall indemnify Lender for any incremental Taxes, interest or penalties that may become payable by Lender as a result of any such failure.

4.6 Interest. Lender does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to, any rate of interest under the Loan Documents, including the Alternate Base Rate, the Benchmark, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), any component definition thereof or rates referred to in the definition thereof, including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or will produce the same value or economic equivalence of, or have the same volume or liquidity as, any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Lender and its affiliates or other related entities may engage in transactions that affect the calculation of any rate of interest under the Loan Documents, including the Alternate Base Rate, the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to Borrower. Lender does not warrant or accept responsibility for, and shall not have any liability with respect to, such transactions. Lender may select information sources or services in its reasonable discretion to ascertain any rate of interest under the Loan Documents, including the Alternate Base Rate, the Benchmark, or any alternative, successor or replacement rate (including any Benchmark Replacement), in each case pursuant to the terms of this Note, and shall have no liability to Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

4.7 Benchmark Unavailability and Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document (and a Hedging Contract shall be deemed not to be a "Loan Document" for purposes of this Section 4.7), upon the occurrence of a Benchmark Transition Event, Lender and the Borrower may amend this Note to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after Lender has posted such proposed amendment to Borrower. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 4.7(a) will occur prior to the applicable Benchmark Transition Start Date.

(b) Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Lender will have the right (in consultation with Borrower) to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Note or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. Lender will promptly notify the Borrower of (i) the implementation of any Benchmark Replacement, and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Lender will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 4.7(d) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Lender pursuant to this Section 4.7, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Note or any other Loan Document, except, in each case, as expressly required pursuant to this Section 4.7.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Lender in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Lender may modify the definition of "interest period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Lender may modify the definition of "interest period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a borrowing of or conversion to SOFR Loans to be made or converted during any Benchmark Unavailability Period and, failing that, (i) the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to ABR Loans and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans immediately. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

EXHIBIT B

Lender's Closing Fees

Citizens
Commercial Banking™

INVOICE

Borrower:	WAUWINET INN LLC	Date: 09/14/2023
Loan Amount:	$7,100,000.00	

EXPENSES

REDACTED

Should you have any questions, please contact adrienne.robinson@citizensbank.com.

Thank You

SCHEDULE 2

Ownership Interests

WAUWINET INN
Ownership Chart
(As of August 2023)

REDACTED

TOWN OF NANTUCKET MASS INCORPORATED 1671

Agenda Item Summary

Agenda Item #	II. 3
Date	11/13/2023

Staff

Amy Baxter, Licensing Administrator

Subject

Change of Hours – ***Annapurna Restaurants, LLC dba Sophie T's, 8A Bayberry Ct., License #07419-RS-0762***

Executive Summary

Licensing is requesting an administrative update to liquor service hours of ***Annapurna Restaurants, LLC*** for an ***Annual Restaurant Wine and Malt Beverages*** Liquor License for ***DBA Sophie T's*** at ***8A Bayberry Ct***.

Staff Recommendation

It is recommended and required by MGL that Liquor License # 07419-RS-0762 be amended with the alcohol service hours extended until 11:00 pm.

Background/Discussion

Per ABCC FAQ's:

17. Do LLAs set the hours during which restaurants can serve alcoholic beverages on weekdays?

To a limit. Massachusetts State Law says that § 12 licensees cannot be barred from serving alcohol between 11:00 a.m.-11:00 p.m. LLAs may grant extended opening hours between 8:00 a.m. and 11:00 a.m. and extended closing hours between 11:00 p.m. and 2:00 a.m. In no event can sales be made between 2:00 a.m. and 8:00 a.m.

Please note Special Permit for the property supports service until 11:00 pm:

Condition #4 of Amendment #12 to Nantucket Commons Major Commercial Development (MCD) special permit #6-86 reads, "The restaurant shall be open no earlier than 11 a.m. and shall close no later than 11 p.m.." Additional relief through the Planning Board is required to alter condition #4 of MCD #6-86.

Impact: Environmental ☐ Fiscal ☐ Community☐ Other☐

N/A

Board/Commission Recommendation

N/A

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

N/A

Attachments

Sophie T’s Liquor Licenses; ABCC Change of Hours LAC

The ***Commonwealth of Massachusetts***
Alcoholic Beverages Control Commission

☐ For Reconsideration

LICENSING AUTHORITY CERTIFICATION

City /Town: Nantucket

ABCC License Number: 07419-RS-0762

TRANSACTION TYPE (Please check all relevant transactions):

The license applicant petitions the Licensing Authorities to approve the following transactions:

☐ New License
☐ Transfer of License
☐ Change of Manager
☐ Change of Officers/ Directors/LLC Managers
☐ Change of Location
☐ Alteration of Licensed Premises
☐ Change Corporate Name
☐ Change of Ownership Interest (LLC Members/ LLP Partners, Trustees)
☐ Change of Class (i.e. Annual / Seasonal)
☐ Change of License Type (i.e. club / restaurant)
☐ Change of Category (i.e. All Alcohol/Wine, Malt)
☐ Issuance/Transfer of Stock/New Stockholder
☐ Other
☐ Change Corporate Structure (i.e. Corp / LLC)
☐ Pledge of Collateral (i.e. License/Stock)
☐ Management/Operating Agreement
☒ Change of Hours
☐ Change of DBA

APPLICANT INFORMATION

Name of Licensee: Annapurna Restaurants, LLC

DBA: Sophie T's

Street Address: 8A Bayberry CT, Nantucket, MA

Zip Code: 02554

Manager: Bharat Banjara

Granted under Special Legislation? Yes ☐ No ☒

If Yes, Chapter

of the Acts of (year)

Type (i.e. restaurant, package store)	Class (Annual or Seasonal)	Category (i.e. Wines and Malts / All Alcohol)
§12 Restaurant	Annual	Wines and Malt Beverages

DESCRIPTION OF PREMISES Complete description of the licensed premises

32 Seat Restaurant. First Floor: Dining Room Area, Counter for take-out, Restrooms & Two Egresses.

LOCAL LICENSING AUTHORITY INFORMATION

Application filed with the LLA: Date 11/01/2023 Time

Advertised Yes ☐ No ☒ Date Published Publication

Abutters Notified: Yes ☐ No ☒ Date of Notice

Date APPROVED by LLA 11/13/2023

Decision of the LLA **Approves this Application**

Additional remarks or conditions (E.g. Days and hours): Closing Hour set at 11:00 pm

For Transfers ONLY:

Seller License Number:

Seller Name:

The Local Licensing Authorities By:

Alcoholic Beverages Control Commission
Ralph Sacramone
Executive Director

LICENSE #: 07419-RS-0762 **LICENSE FEE: $2,000.00**

THE LICENSING BOARD *for the*
TOWN OF NANTUCKET, MASSACHUSETTS

HEREBY GRANTS AN

ANNUAL RETAIL RESTAURANT LICENSE

TO EXPOSE, KEEP FOR SALE, AND TO SELL

WINE AND MALT BEVERAGES

TO BE CONSUMED ON THE PREMISES

BUSINESS: Annapurna Restaurants LLC
DBA: Sophie T's
PREMISES: 8A Bayberry Court
Nantucket, MA 02554
MANAGER: Bharat Banjara

ON PREMISES DESCRIBED AS:
32 Seat Restaurant. First Floor: Dining Room Area, Counter for take-out, Restrooms & Two Egresses.

The hours during which alcoholic beverages may be sold: In accordance with MGL Chapter 138 and amendments thereto with the local provision that patrons shall not be served alcoholic beverages before 8:00AM Monday through Saturday and 11:00AM on Sunday. **No alcohol service is permitted after 11:00PM** and patrons must be off the license premises and said **premises must be closed by 11:30PM**. Any restrictions apply as are on file with the local licensing authority. In accordance with Article 40 ATM 2001, Chapter 86.1 Board of Health Regulations Prohibit Smoking in Certain Places within the Town of Nantucket.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the General Laws, as amended and any rules or regulations made thereunder by the licensing authorities.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signature on this 13th day of November 2023.

Chair, Select Board

THIS LICENSE WILL EXPIRE DECEMBER 31, 2023

**Unless earlier suspended, cancelled, or revoked*

This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

BEAUDETTE AND SWAIN
PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
35 OLD SOUTH ROAD, SUITE D
P.O. BOX 2049
NANTUCKET, MASSACHUSETTS 02584

RICHARD P. BEAUDETTE
BRYAN J. SWAIN

PHONE: (508) 228-4455
FAX: (508) 228-3070
WWW.NANTUCKETLAWFIRM.COM

OF COUNSEL
KEVIN F. DALE
WILLIAM F. HUNTER

Thursday, November 2, 2023

VIA E-MAIL

Amy C. Baxter
Licensing Administrator
2 Fairgrounds Road
Nantucket, MA 02554
abaxter@police.nantucket-ma.gov

Re: Nantucket Restaurant Management Corporation
Application to Change its Classification
27 Fairgrounds Road, Nantucket, MA 02554
License No. 00082-RS-0762

Dear Amy:

As you are aware, my office filed a change of classification application on behalf of Nantucket Restaurant Management, Corporation, d/b/a Faregrounds Restaurant, that is scheduled to be heard on Monday November 13, 2023. The Applicant would like to withdraw its application to change its classification, and desires to continue to operate its establishment under its existing license. Can you please inform the Select Board of this information and request that the above-captioned matter be removed from their November 13, 2023 agenda?

Please let me know if you have any questions. I can be reached by email at bryan@nantucketlawfirm.com or by phone at 508-228-4455.

Sincerely,

Bryan Swain

Bryan J. Swain, Esq.

TOWN OF NANTUCKET, MASS · INCORPORATED 1671

Agenda Item Summary

Agenda Item #	III. 2.
Date	11/13/2023

Staff

Amy Baxter, Licensing Administrator

Subject

Liquor License Alteration of Premises Application – ***Lemon Press Market, LLC dba Lemon Press Market, 41 Main Street, License #04022-RS-0762***

Executive Summary

Lemon Press Market, LLC is applying for an Alteration of Premises for a ***Seasonal Restaurant All Alcoholic Beverages*** Liquor License for ***DBA Lemon Press Market*** at ***41 Main Street***.

The Application requests the following amendment:

Alteration of Premises: Remove 2nd Floor Prep Kitchen from licensed premises. The alteration is required to allow Lemon Press to move forward with a State application for a 12C Caterer's Liquor License issued by the ABCC. The space will be used for storage of alcohol related to the 12C Licenses which must be stored separately from the Restaurant alcohol.

Staff Recommendation

Applicant has met all requirements to file an Alteration of Premises as was requested by the ABCC.

Requirements for Alteration of Premises as listed above of Liquor License Premises:

- ABCC Alteration of Premises Application
- Floor Plan for Licensed and Proposed Premises
- Supporting Financial Records
- Legal Right to Occupy
- Advertisement and Abutter Notification

Background/Discussion

For reference purposes, the conditions below are for a 12C Caterer's Liquor License which the applicant has applied for with the ABCC.

- The caterer license allows the holder to cater private events outside the premises of the principal place of business.

- This license is not for catering open to the public. For events open to the public, a special one day permit is needed and issued by the town.
- Caterers can only purchase alcohol from a licensed Massachusetts wholesaler or other authorized source such as a Farmer Series licensee.
- To be eligible for a Caterer license in Massachusetts, the company must store alcohol in Massachusetts.
- The caterer can serve alcohol at a private event for a maximum of 5 hours.
- Caterers can not deliver or sell alcoholic beverages at a location already licensed to serve alcohol.
- 48 hours before the event, the caterer must provide written notice of the event to the local police chief and Local Licensing Authority. This needs to include a copy of the 12C license, a copy of the liquor liability insurance, and emergency contact information for the manager of the 12C license.

Impact: Environmental ☐ Fiscal ☐ Community☐ Other☐

N/A

Board/Commission Recommendation

N/A

Public Outreach

Advertised in the I&M 11/2/2023

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

N/A

Attachments

ABCC Alteration of Premises Application and Supporting Documents; Lemon Press Licenses

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission

☐ For Reconsideration

LICENSING AUTHORITY CERTIFICATION

Nantucket	4022-RS-0762
City /Town	ABCC License Number

TRANSACTION TYPE (Please check all relevant transactions):

The license applicant petitions the Licensing Authorities to approve the following transactions:

☐ New License
☐ Transfer of License
☐ Change of Manager
☐ Change of Officers/ Directors/LLC Managers

☐ Change of Location
☒ Alteration of Licensed Premises
☐ Change Corporate Name
☐ Change of Ownership Interest (LLC Members/ LLP Partners, Trustees)

☐ Change of Class (i.e. Annual / Seasonal)
☐ Change of License Type (i.e. club / restaurant)
☐ Change of Category (i.e. All Alcohol/Wine, Malt)
☐ Issuance/Transfer of Stock/New Stockholder
☐ Other

☐ Change Corporate Structure (i.e. Corp / LLC)
☐ Pledge of Collateral (i.e. License/Stock)
☐ Management/Operating Agreement
☐ Change of Hours
☐ Change of DBA

APPLICANT INFORMATION

Name of Licensee: Lemon Press Market, LLC
DBA: Lemon Press
Street Address: 41 Main Street, Nantucket, MA
Zip Code: 02554
Manager: Rachel Afshari

Granted under Special Legislation? Yes ☐ No ☒
If Yes, Chapter
of the Acts of (year)

§12 Restaurant	Seasonal	All Alcoholic Beverages
Type (i.e. restaurant, package store)	Class (Annual or Seasonal)	Category (i.e. Wines and Malts / All Alcohol)

DESCRIPTION OF PREMISES Complete description of the licensed premises

Two-story brick building located at 41 Main Street, containing a restaurant and take-out establishment. The entire first floor, including an open dining room, bar and patron seating, hallway, kitchen, and prep area. Second-floor seating, dining and lounge areas, service station, and hallway (excluding second-floor prep kitchen). Entire basement. Outdoor patio seating area.

LOCAL LICENSING AUTHORITY INFORMATION

Application filed with the LLA: Date 10/20/2023 Time
Advertised Yes ☒ No ☐ Date Published 11/2/2023 Publication Inquirer & Mirror
Abutters Notified: Yes ☒ No ☐ Date of Notice 10/11/2023

Date APPROVED by LLA 11/13/2023 **Decision of the LLA** **Approves this Application**

Additional remarks or conditions (E.g. Days and hours)

For Transfers ONLY:
Seller License Number: Seller Name:

The Local Licensing Authorities By:

Alcoholic Beverages Control Commission
Ralph Sacramone
Executive Director

BEAUDETTE AND SWAIN
PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
35 OLD SOUTH ROAD, SUITE D
P.O. BOX 2049
NANTUCKET, MASSACHUSETTS 02584

RICHARD P. BEAUDETTE
BRYAN J. SWAIN

PHONE: (508) 228-4455
FAX: (508) 228-3070
WWW.NANTUCKETLAWFIRM.COM

OF COUNSEL
KEVIN F. DALE
WILLIAM F. HUNTER

Thursday, October 12, 2023

RECEIVED
OCT 20 2023
BY:

EMAIL AND HAND DELIVERY

Amy Baxter, Licensing Administrator
2 Fairgrounds Road
Nantucket, MA 02554

Re: Lemon Press Market, LLC
Alteration of Premises Application
41 Main Street, Nantucket, MA 02554

Dear Amy:

My office represents Lemon Press Market, LLC, in the above- referenced matter. My client hereby applies to alter its licensed premises to remove the second-floor kitchen therefrom, which it intends to separately license under a state issued Caterer's License. Enclosed, please find the Alteration of Premises Application, and the requisite materials in connection therewith. Can you please place this matter on the next available Select Board's public hearing agenda? I am available by phone at 508-228-4455 or by email at: bryan@nantucketlawfirm.com.

Sincerely,

Bryan Swain

Bryan J. Swain, Esq.

Enc.
cc: Lemon Press Market, LLC

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION
MONETARY TRANSMITTAL FORM

AMENDMENT-Change or Alteration of Premises Information

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.

ECRT CODE: RETA

Please make $200.00 payment here: ABCC PAYMENT WEBSITE

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY) 4022-RS-0762

ENTITY/ LICENSEE NAME Lemon Press Market, LLC

ADDRESS 41 Main Street

CITY/TOWN Nantucket **STATE** MA **ZIP CODE** 02554

For the following transactions (Check all that apply):

☐ New License
☐ Transfer of License
☐ Change of Manager
☐ Change of Officers/Directors
☐ Change of Ownership Interest
☐ Change Corporate Name
☐ Change of DBA
☒ Alteration of Licensed Premises
☐ Change of Location
☐ Other
☐ Change of Class (i.e. Annual / Seasonal)
☐ Change of License Type (i.e. club / restaurant)
☐ Change of Category (i.e. All Alcohol/Wine, Malt)
☐ Issuance/Transfer of Stock/New Stockholder
☐ Change Corporate Structure (i.e. Corp / LLC)
☐ Change of Hours
☐ Pledge of Collateral (i.e. License/Stock)
☐ Management/Operating Agreement

THE LOCAL LICENSING AUTHORITY MUST SUBMIT THIS APPLICATION ONCE APPROVED VIA THE ePLACE PORTAL

Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150-2358

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

AMENDMENT-Change or Alteration of Premises Information

☐ Change of Location

- Payment Receipt
- Monetary Transmittal Form
- Chg of Location/Alteration of Premises Application
- Financial Statement
- Vote of the Entity
- Supporting financial records
- Legal Right to Occupy
- Floor Plan
- Abutter's Notification
- Advertisement

☒ Alteration of Premises

- Payment Receipt
- Monetary Transmittal Form
- Chg of Location/Alteration of Premises Application
- Financial Statement
- Vote of the Entity
- Supporting financial records
- Legal Right to Occupy
- Floor Plan
- Abutter's Notification
- Advertisement

1. BUSINESS ENTITY INFORMATION

Entity Name	Municipality	ABCC License Number
Lemon Press Market, LLC	Nantucket	4022-RS-0762

Please provide a narrative overview of the transaction(s) being applied for. Attach additional pages, if necessary.

The Applicant seeks to remove the prep kitchen on the second floor from part of the licensed premises so that such space can be designated and licensed under a separate, state issued, Caterer's License.

APPLICATION CONTACT

The application contact is the person who should be contacted with any questions regarding this application.

Name	Title	Email	Phone
Bryan Swain	Attorney	bryan@nantucketlawfirm.com	508-228-4455

2. ALTERATION OF PREMISES

2A. DESCRIPTION OF ALTERATIONS

Please summarize the details of the alterations and highlight any specific changes from the last-approved premises.

The Applicant seeks to remove the prep kitchen on the second floor from part of the licensed premises so that such space can be designated and licensed under a separate Caterer's License.

2B. PROPOSED DESCRIPTION OF PREMISES

Please provide a complete description of the proposed premises, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage. You must also submit a floor plan.

Two-story brick building located at 41 Main Street, containing a restaurant and take-out establishment. The entire first floor, including an open dining room, bar and patron seating, hallways, kitchen, and prep area. Second-floor seating, dining and lounge areas, service station, and hallways (excluding second-floor prep kitchen). Entire basement. Outdoor patio seating area.

Total Sq. Footage	11,500.00	Seating Capacity	124	Occupancy Number	
Number of Entrances	1	Number of Exits	2	Number of Floors	2

AMENDMENT-Change or Alteration of Premises Information

3. CHANGE OF LOCATION

3A. PREMISES LOCATION

Last-Approved Street Address: N/A

Proposed Street Address: N/A

3B. DESCRIPTION OF PREMISES

Please provide a complete description of the premises to be licensed, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage. You must also submit a floor plan.

The location is not being changed, just the "licensed premsies".

Total Sq. Footage	N/A	Seating Capacity	N/A	Occupancy Number	N/A
Number of Entrances	N/A	Number of Exits	N/A	Number of Floors	N/A

3C. OCCUPANCY OF PREMISES

Please complete all fields in this section. Please provide proof of legal occupancy of the premises. (E.g. Deed, lease, letter of intent)

Please indicate by what means the applicant has to occupy the premises: Lease

Landlord Name: Joseph V. Arno

Landlord Phone: C/O Ken Gullicksen, 508-228-3128

Landlord Email: kag@readelaw.com

Landlord Address: 41 Main Street, Nantucket, MA 02554

Lease Beginning Date	12/20/2022	Rent per Month	19,583.33
Lease Ending Date	12/31/2027	Rent per Year	235,000.00

Will the Landlord receive revenue based on percentage of alcohol sales? ● Yes ○ No

4. FINANCIAL DISCLOSURE

Associated Cost(s): (i.e. Costs associated with License Transaction including but not limited to: Property price, Business Assets, Renovations costs, Construction costs, Initial Start-up costs, Inventory costs, or specify other costs):

Associated Cost(s): 0.00

SOURCE OF CASH CONTRIBUTION

Please provide documentation of available funds. (E.g. Bank or other Financial institution Statements, Bank Letter, etc.)

Name of Contributor	Amount of Contribution
N/A	
Total:	0.00

SOURCE OF FINANCING

Please provide signed financing documentation.

Name of Lender	Amount	Type of Financing	Is the lender a licensee pursuant to M.G.L. Ch. 138.
N/A			○ Yes ○ No
			○ Yes ○ No
			○ Yes ○ No
			○ Yes ○ No

APPLICANT'S STATEMENT

I, RACHEL AFSHARI the: ☐ sole proprietor; ☐ partner; ☐ corporate principal; ☒ LLC/LLP manager

Authorized Signatory

of LEMON PRESS MARKET LLC

Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

(1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;

(2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;

(3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;

(4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;

(5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;

(6) I understand that all statements and representations made become conditions of the license;

(7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;

(8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and

(9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.

(10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature: Rachel

Date: 10/11/23

Title: Manager

ENTITY VOTE

The Board of Directors or LLC Managers of Lemon Press Market, LLC
Entity Name

duly voted to apply to the Licensing Authority of Nantucket and the
City/Town

Commonwealth of Massachusetts Alcoholic Beverages Control Commission on October 11, 2023
Date of Meeting

For the following transactions (Check all that apply):

☒ Alteration of Licensed Premises

☐ Change of Location

☐ Other

"VOTED: To authorize RACHEL AFSHARI
Name of Person

to sign the application submitted and to execute on the Entity's behalf, any necessary papers and do all things required to have the application granted."

A true copy attest,

Corporate Officer /LLC Manager Signature

(Print Name)

For Corporations ONLY

A true copy attest,

Corporation Clerk's Signature

RACHEL AFSHARI

(Print Name)

MEASURING NOTES:

THOUGH ALL EFFORTS HAVE BEEN MADE TO ENSURE AN ACCURATE REPRESENTATION OF THE CONTENTS AND SPACE AT 41 MAIN STREET. INACCURACIES MAY EXIST. PLEASE CONFIRM ANY DISCREPANCIES WITH SURVEYOR OR MEERBERGEN DESIGNS

HEALTH DEPT. NOTES:

PLAN SHOWN HEREON IS FOR BASIC BUILDING CODE REVIEW INCLUDING BUT NOT LIMITED TO EXISTING AND CURRENT USE OF SPACE, STRUCTURAL INTEGRITY, AND ANY 521 CMR REQUIREMENTS. HEALTH CODE COMPLIANCY WILL BE DETERMINED BY OFFICIALS FROM THE NANTUCKET HEALTH DEPARTMENT AND WILL BE BASED ON INFORMATION REQUESTED OF AND FURNISHED BY OWNER OF ALL SPACES REPRESENTED ON PLAN.

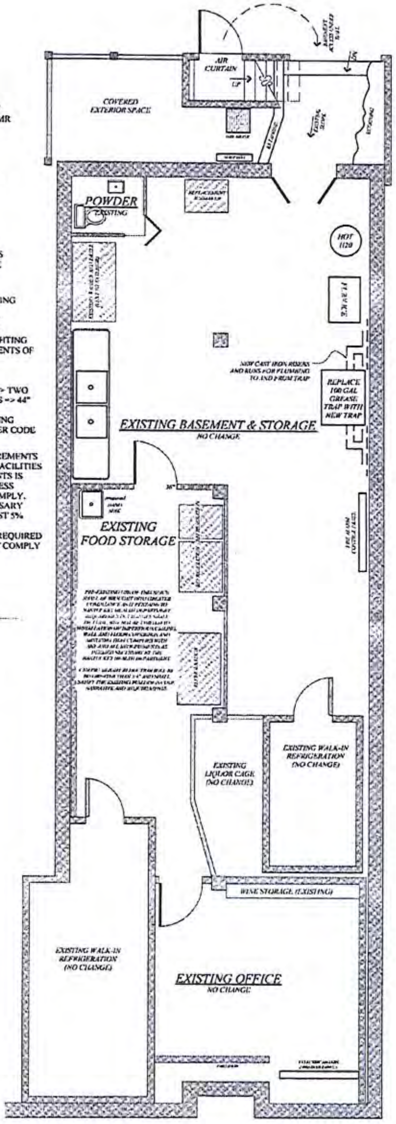
MASS. 8th EDITION NOTES:

1. 8th EDITION REQUIRES USE OF IEBC 2009 WITH MASSACHUSETTS AMENDMENTS
2. PER DEFINITIONS IN SECTION 4; WORK APPEARS TO BE LEVEL ONE CONSTRUCTION, THEREFORE SECTION 6 (IEBC) REQUIREMENTS APPLY AS WELL AS MASSACHUSETTS AMENDMENTS.
3. MASS. AMENDMENT SECTION 102.2.2.1 => EXISTING NON-CONFORMING MEANS OF EGRESS:
   a. ALL BUILDINGS REQUIRE THE NUMBER OF REQUIRED EGRESSES WITH THE REQUIRED WIDTHS. EXIT SIGNS AND EMERGENCY LIGHTING SHALL BE UPGRADED TO MEET REQUIREMENTS OF 2009 IBC; SECTION 1005.1
   b. DESIGN OCCUPANCY => 115 TOTAL
   ACTUAL OCCUPANCE => 156 TOTAL
   REQUIRED MEANS OF EGRESS PER FLOOR => TWO
   MIN. WIDTH FOR STAIRWAYS & CORRIDORS => 44"
   MIN. CLEAR WIDTH FOR DOORS => 32"
   c. INSTALL EXIT SIGNS & EMERGENCY LIGHTING AT EXITS IF NOT CURRENTLY INSTALLED PER CODE
4. SECTION 6 REQUIREMENTS
   a. ACCESSIBILITY => DEFER TO MASS REQUIREMENTS 521 CMR => APPLICABILITY; UPGRADE OF FACILITIES IS NOT REQUIRED IF COST OF IMPROVEMENTS IS LESS THAN 30% FAIR MARKET VALUE OR LESS THAN $100,000. ONLY NEW WORK MUST COMPLY.
   b. STRUCTURAL => NO IMPROVEMENT NECESSARY UNLESS THERE IS AN INCREASE OF AT LEAST 5% IN LOAD VALUES
   c. ENERGY CONSERVATION => NO CHANGES REQUIRED
   d. MATERIALS => ALL NEW MATERIALS MUST COMPLY WITH SECTION 8 OF IBC 2009

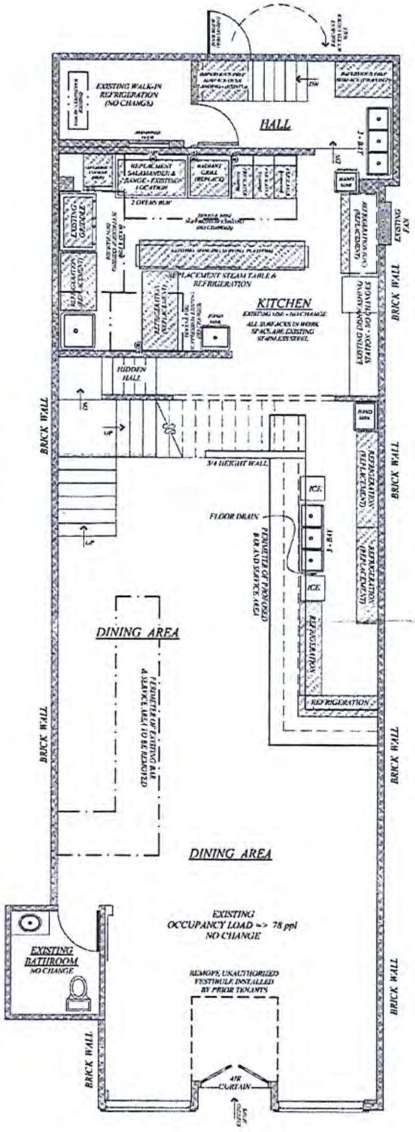
MARK A. [illegible]

5/21/12

Mass Bldg Code 8th Edition Review
Only as noted above.

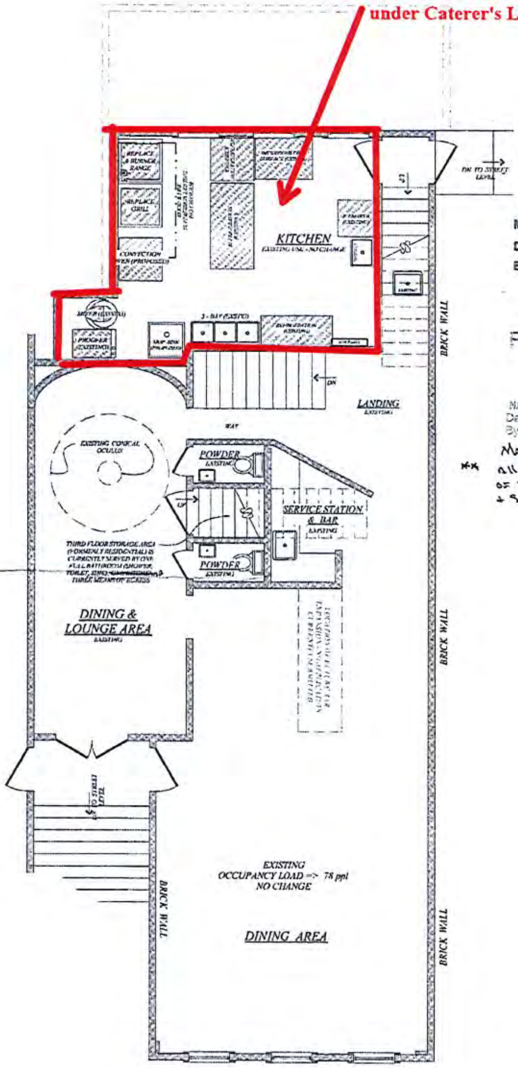


BASEMENT PLAN



FIRST FLOOR

To be removed and seperately licensed under Caterer's License



SECOND FLOOR

REVIEWED
FOR CODE COMPLIANCE
NANTUCKET BUILDING DEPT.
Date 1 31 13
By

FILE COPY

APPROVED
NANTUCKET BUILDING DEPT.
Date 5-25-12
By S Bell

** Maintain 36"+ along all Exit access paths of travel provide Lighting + Signs

1

MAP - 42.3.1
PCL - 208

JOSEPH ARNO ET AL
41 MAIN STREET
NANTUCKET, MA

MAY 22

FLOOR PLANS
SCALE: 1/4" = 1'0"
DATE: 05H12

REVISIONS

BROOK MEERBERGEN DESIGNS
P.O. BOX 673
NANTUCKET, MA 02551
508.228.1388

PUBLIC HEARING NOTICE

Please be advised that the Select Board will hold a public hearing on Monday, November 13, 2023 at 11:00 AM to consider an Alteration of Premises License Application for Lemon Press Market, LLC, d/b/a Lemon Press, located at 41 Main Street, Nantucket, MA 02554, Rachel Afshari, License Manager. The application includes the removal of the prep kitchen on the second floor. The hearing will be held via Zoom Webinar. Please see meeting posting for remote participation and viewing links. For further information, please email licensing@police.nantucket-ma.gov.

J06 SELECT BOARD

TOWN OF NANTUCKET

LIQUOR LICENSE

LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF:

PROPERTY OWNER.....ARNO, JOSEPH, V. TRST, ETAL

MAILING ADDRESS..C/O Beaudette and Swain, LLC, PO BOX 2049
35 (D) Old South Road, Nantucket, MA 02554

PROPERTY LOCATION..41 MAIN ST

ASSESSORS MAP/PARCEL.42.3.1 / 208

SUBMITTED BY:..Bryan J. Swain

SEE ATTACHED PAGES

I certify that the foregoing is a list of persons who are owners of land whose property directly touches the proposed property and churches and schools within 500 feet of the property, all as they appear on the most recent applicable tax list.

Mary L. Haley

Digitally signed by Mary L. Haley
Date: 2023.10.11 13:57:59 -04'00'

October 11, 2023

DATE

ASSESSOR'S OFFICE
TOWN OF NANTUCKET

Abutters Listing

MBLU	Lot	Lot Cut	Name Line 1	Name Line 2	Address Line 1	City	State	Zip	Location
4231	105		UNITARIAN CHURCH		BOX 1023	NANTUCKET	MA	02554	11 ORANGE ST
4231	174		ST MARYS ROMAN CATHOLIC CHURCH		6 ORANGE ST	NANTUCKET	MA	02554	3 FEDERAL ST
4231	199		NANTUCKET UNITED METHODIST CHU		PO BOX 264	NANTUCKET	MA	02554	2 CENTER ST
4231	207		BELL ALLAN D & BONITA L		PO BOX 1056	NANTUCKET	MA	02554	45 MAIN ST
4231	209		MARLIN CAPITAL CORP TRUSTEE	C/O THE MAURY PEOPLE	35 MAIN STREET	NANTUCKET	MA	02554	37 MAIN ST
Count:	**5**								

LICENSE #: 04022-RS-0762 **LICENSE FEE: $3,900.00**

THE LICENSING BOARD *for the*
TOWN OF NANTUCKET, MASSACHUSETTS

HEREBY GRANTS AN

SEASONAL RETAIL RESTAURANT LICENSE

TO EXPOSE, KEEP FOR SALE, AND TO SELL

ALL ALCOHOLIC BEVERAGES

TO BE CONSUMED ON THE PREMISES

BUSINESS:	**Lemon Press Market LLC**
DBA:	**LEMON PRESS** **41 Main Street** **Nantucket, MA 02554**
MANAGER:	**Rachel M Afshari**

ON PREMISES DESCRIBED AS:

Two-story brick building located at 41 Main Street, containing a restaurant and take-out establishment. The entire first floor, including an open dining room, bar and patron seating, hallways, kitchen, and prep area. Second-floor seating, dining and lounge areas, service station, and hallways (excluding second-floor prep kitchen). Entire basement. Outdoor patio seating area 5pm – 10pm only as permitted by Select Board.

The hours during which alcoholic beverages may be sold: In accordance with MGL Chapter 138 and amendments thereto with the local provision that patrons shall not be served alcoholic beverages before 8:00AM Monday through Saturday and 11:00AM on Sunday. **No alcohol service is permitted after 1:00AM** and patrons must be off the license premises and said **premises must be closed by 1:30AM**. Any restrictions apply as are on file with the local licensing authority. In accordance with Article 40 ATM 2001, Chapter 86.1 Board of Health Regulations Prohibit Smoking in Certain Places within the Town of Nantucket.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the Massachusetts General Laws, as amended and any rules or regulations made thereunder by the licensing authorities, including, but not limited to Chapter 250 of the Town of Nantucket Rules and Regulations Governing Alcoholic Beverages.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signature on this day of 202X.

Chair, Select Board

THIS LICENSE IS VALID APRIL 1, 2023–JANUARY 15, 2024

**Unless earlier suspended, cancelled, or revoked*

TOWN OF NANTUCKET, MASS. INCORPORATED 1671

Agenda Item Summary

Agenda Item #	III. 3 & 4.
Date	11/13/2023

Staff

Amy Baxter, Licensing Administrator

Subject

<u>New Restaurant Application to Include: Common Victualler with Annual All Alcoholic Beverages On-Premise License</u> – Casa Real Restaurant & Bar, Inc. dba Casa Real Restaurant & Bar, 5 Macy's Lane, Mayra Escobar Manager.

Executive Summary

The Applicant seeks NEW Licenses for the operation of premises at 5 Macy's Lane.

The Licenses under review in separate Public Hearings are:

- Common Victualler with Annual All Alcoholic Beverages Restaurant Liquor License
- Live Entertainment License for Interior Spaces.

The Licenses of the existing operator, Cocktail Court, LLC dba The Saltbox were not issued for 2023 after renewal in November 2022. The Licenses have not been active since 2022. See below for further background.

Staff Recommendation

<u>Comments and Consideration</u>:

1) Pursuant to MGL c. 138, §23 and Ballarin v. Licensing Board of Boston, decisions of the Local Licensing Authority must be based on reasonable grounds;
2) ABCC and courts prefer findings be based on the following:

The appropriateness of a liquor license at a particular location

The number of existing dispensaries in Town

Annual Package Stores – Wine & Malt:	5
Annual Package Stores – All Alcohol:	5
Seasonal Package Stores – Wine & Malt:	5
Seasonal Package Stores – All Alcohol:	4
Annual On-Premise Licenses:	44
Seasonal On-Premise Licenses:	41

The views of the inhabitants of the locality in which a license is sought

- No public comments were received by Licensing as of 11-7-23.

Traffic, noise, size (typically applies to a new location)

The sort of operation that carries the license and reputation of the applicant

The applicant is requesting the same type and category of licenses that existed with the previous operator. Renovations currently underway are mostly cosmetic with no significant alteration to the premises.

It is recommended by Licensing and with Legal Counsel recommendation that any motion to approve this application be made on the condition of the non-renewal of The Saltbox license which would occur on December 1, 2023 and after vote of The Select Board at its December 11 Licensing Hearings.

Background/Discussion

Please see below and attached communications to detail the background on property ownership and legal issues arising from the sale earlier this year.

The property at 5 Macy's Lane was sold to the applicant in 2023.

There were no licenses issued to The Saltbox and no operations at the location in 2023.

After the purchase of the building there was a legal dispute on the rights of The Saltbox to continue to occupy the premises and open up the restaurant in 2023. There was an eviction notice and The Saltbox claimed a valid lease still existed.

The Saltbox claimed not to have been noticed on the sale of the premises and ultimately received notice of the details from Licensing (see attached communication).

The situation continued throughout the Spring. The Saltbox was being asked to pay their fees and provide a notarized Legal Right to Occupy the Premises so the required inspections could move forward. That was never received. The last communication with The Saltbox and their attorney was on May 17, 2023. We have not received a response since that time.

Impact: Environmental ☐ Fiscal ☐ Community☐ Other☐

N/A

Board/Commission Recommendation

N/A

Public Outreach

Advertised in the I&M 11/2/2023

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

N/A

Attachments

New Liquor License ABCC Application and Floor Plans; ABCC Summary Form; Determination Letter; The Saltbox Licenses; Draft Liquor and Entertainment Licenses

The ***Commonwealth of Massachusetts***
Alcoholic Beverages Control Commission

☐ For Reconsideration

LICENSING AUTHORITY CERTIFICATION

City /Town: Nantucket

ABCC License Number:

TRANSACTION TYPE (Please check all relevant transactions):

The license applicant petitions the Licensing Authorities to approve the following transactions:

- ☒ New License
- ☐ Transfer of License
- ☐ Change of Manager
- ☐ Change of Officers/ Directors/LLC Managers
- ☐ Change of Location
- ☐ Alteration of Licensed Premises
- ☐ Change Corporate Name
- ☐ Change of Ownership Interest (LLC Members/ LLP Partners, Trustees)
- ☐ Change of Class (i.e. Annual / Seasonal)
- ☐ Change of License Type (i.e. club / restaurant)
- ☐ Change of Category (i.e. All Alcohol/Wine, Malt)
- ☐ Issuance/Transfer of Stock/New Stockholder
- ☐ Other
- ☐ Change Corporate Structure (i.e. Corp / LLC)
- ☐ Pledge of Collateral (i.e. License/Stock)
- ☐ Management/Operating Agreement
- ☐ Change of Hours
- ☐ Change of DBA

APPLICANT INFORMATION

Name of Licensee: Casa Real Restaurant & Bar Inc.

DBA: Casa Real Restaurant & Bar

Street Address: 5 Macys Lane, Nantucket, MA

Zip Code: 02554

Manager: Mayra Escobar

Granted under Special Legislation? Yes ☐ No ☒

If Yes, Chapter

of the Acts of (year)

§12 Restaurant	Annual	All Alcoholic Beverages
Type (i.e. restaurant, package store)	Class (Annual or Seasonal)	Category (i.e. Wines and Malts / All Alcohol)

DESCRIPTION OF PREMISES Complete description of the licensed premises

Basement and first floor in commercial building, and outdoor patio. First floor contains approximately 2,202 sq. ft. including restrooms, dining and seating areas, bar, kitchen and coolers. Basement contains approximately 1,938 sq. ft. including office, open area, storage area, wine room, bathroom and coolers. Secured outdoor patio, containing approximately 1,030 sq. ft. with seasonal ancillary bar and seating.

LOCAL LICENSING AUTHORITY INFORMATION

Application filed with the LLA: Date 10/19/2023 Time

Advertised Yes ☒ No ☐ Date Published 11/2/2023 Publication Inquirer & Mirror

Abutters Notified: Yes ☒ No ☐ Date of Notice 10/11/2023

Date APPROVED by LLA 11/13/2023

Decision of the LLA **Approves this Application**

Additional remarks or conditions (E.g. Days and hours)

For Transfers ONLY:

Seller License Number:

Seller Name:

The Local Licensing Authorities By:

Alcoholic Beverages Control Commission
Ralph Sacramone
Executive Director

From: noreply@civicplus.com
Sent: Wednesday, October 25, 2023 1:33 PM
To: Licensing
Subject: Online Form Submittal: NEW LIQUOR LICENSE APPLICATION

NEW LIQUOR LICENSE APPLICATION

LICENSING & PERMITS
PSF, 4 Fairgrounds Road, M-F 8am-4pm
508-325-4100, x5917 x5832
licensing@police.nantucket-ma.gov

NEW LICENSE APPLICATION

LIQUOR - COMMON VICTUALLER - ENTERTAINMENT

Application Documents	Submit
Town of Nantucket Application (this form)	Apply and submit online
ABCC New Liquor Application	Complete online, scan or save as pdf and submit to Licensing via email or in person.
Business Structure Documents	Upload below or submit with ABCC Application.
CORI Forms	Must be notarized. Submit with ABCC Application.
Proof of Citizenship - License Manager	Submit with ABCC Application.
Supporting Financial Documents for financing or loans	Submit copies with ABCC Application - best to submit in person and not send over email.
Lease or Deed	Upload below or submit with ABCC Application

Detailed Floor Plan	Upload below or email pdf to Licensing@police.nantucket-ma.gov.
Proposed Menu (if applicable)	Upload or describe below for Common Victualler License.

Fee Description	Fee	Payment
ABCC Application	$200	Pay Online at time of application. Include email receipt with application.
Town of Nantucket Application	$200	Make check payable to Town of Nantucket. Submit with application to Licensing Office.
Public Notice Advertisement	$184.71	Make check payable to Inquirer and Mirror. Submit with application to Licensing Office.

LETTER TO SELECT BOARD: SUMMARY OF LICENSE APPLICATION	The Applicant is applying for an annual, all-alcoholic beverages liquor license, entertainment license, and CV License, for the property located at 5 Macy's Lane, Nantucket, MA, in connection with its Mexican-style restaurant. Alcohol services will end at 1:00 a.m., as required by Town of Nantucket rules and regulations. The Restaurant is proposed to be open year-round and be a family-friendly, casual dining, Mexican-themed restaurant. The proposed establishment will fill a much-needed niche as it will provide an additional dining experience for year-round residents.

APPLICANT INFORMATION

Business Name (ex. Nantucket Restaurant, LLC)	Casa Real Restaurant & Bar, Inc
Doing Business As (D/B/A) (ex. Nantucket Cafe)	Casa Real Restaurant & Bar
First Name of Primary Contact	Bryan
Last Name of Primary Contact	Swain

Title of Primary Contact	Attorney
Cell/Phone Number of Primary Contact:	508-228-4455
Email of Primary Contact	bryan@nantucketlawfirm.com
Additional Contact	Mayra Escobar
Additional Contact Email	aguilarma82@yahoo.com

LICENSE APPLICATION

Common Victualler and Entertainment Licenses required for ON-Premise Liquor Licenses only.

Proposed Licensed Premise Address	5 Macy's Lane, Nantucket, MA 02554
Please describe the proposed licensed premises to include all seating, serving and strorage areas.	Basement and first floor in a commercial building, and outdoor patio. The entire first floor contains approximately 2,202 s.f., including restrooms, lobby, hallways, dining and seating areas, bar, kitchen, and coolers. Basement containing approximately 1,938 s.f., including office, open areas, storage areas, wine room, bathroom, and coolers. Secured outdoor patio, containing approximately 1,030 s.f., with seasonal ancillary bar and seating area.
Have you made or plan on making any renovations to the premises?	Yes
Describe renovations plan	Minor cosmetic renovations. Painting, replacing furniture, updating decor, and replacing fixtures, if necessary.
Change of Use	No
Planning Board/Zoning	Yes, Decision included with Application
LIQUOR TYPE	On-Premise/CV: Restaurant
LIQUOR CLASS	Annual
LIQUOR CATEGORY	All Alcoholic Beverages

(Section Break)

COMMON VICTUALLER/FOOD SERVICE FOR ON-PREMISE LICENSES	Seated Dining, Outdoor Dining, Take-Out, Delivery, Private/Special Event Catering, Breakfast, Brunch, Lunch, Dinner, Late Night Menu (Light menu/Bar Menu)
Describe Food and Beverage Plan	The Applicant will provide seated food and beverage service to its patrons who are dining at the restaurant. They will additionally offer take-out and delivery services. Outdoor seating will be provided seasonally. The applicant will offer breakfast, lunch, dinner, and post-dinner options.

(Section Break)

ENTERTAINMENT FOR ON-PREMISE LICENSES	NON-LIVE INDOORS: Background Streaming Music played through House System, NON-LIVE OUTDOORS: Background Streaming Music played through House System, NON-LIVE: TV Screens, Video Projection, LIVE INDOORS LEVEL 1: Acoustic Live Music, no additional speakers or amplification, LIVE INDOORS LEVEL 2: Live Entertainment with amplification and/or additional speakers. Includes DJ and Musicians, Vocalists
Will Furniture, tables, chairs be moved for Live Entertainment?	No
Entertainment Hours	Monday to Thursday: 11:00 am to 1:00 am Friday to Sunday: 7:00 am to 1:00 am
Describe Entertainment Plan	The Applicant desires to have background music in the interior and exterior of the premises, played through a house sound system. The Applicant will also have television throughout the interior of the premises. Live music and/or DJ services are proposed to be limited to the interior of the building. There is no plan for a dedicated dance floor, or to move furniture around to create one.

UPLOAD DOCUMENTS

Upload required documents below. You may also email to Licensing@police.nantucket-ma.gov or print and deliver to 4 Fairgrounds Road 02554, Mon-Fri 8am - 4 pm.

Upload Documents	*Field not completed.*
Upload Documents	*Field not completed.*
Upload Documents	*Field not completed.*

Upload Documents	*Field not completed.*
ADDITIONAL COMMENTS, QUESTIONS	*Field not completed.*
SIGNATURE OF APPLICANT	Bryan J. Swian, Esq. , Attorney for Applicant

Email not displaying correctly? View it in your browser.

BEAUDETTE AND SWAIN
PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
35 OLD SOUTH ROAD, SUITE D
P.O. BOX 2049
NANTUCKET, MASSACHUSETTS 02584

RICHARD P. BEAUDETTE
BRYAN J. SWAIN

PHONE: (508) 228-4455
FAX: (508) 228-3070
WWW.NANTUCKETLAWFIRM.COM

OF COUNSEL
KEVIN F. DALE
WILLIAM F. HUNTER

RECEIVED
OCT 19 2023
BY:

Tuesday, October 17, 2023

VIA HAND DELIVERY

Amy C. Baxter
Licensing Administrator
2 Fairgrounds Road
Nantucket, MA 0254
abaxter@police.nantucket-ma.gov

Re: Casa Real Restaurant & Bar, Inc.
Application for a New Restaurant Liquor License
5 Macys Lane, Nantucket, MA 02554

Dear Amy:

My office represents Casa Real Restaurant & Bar, Inc. in the above-referenced matter. My client is applying for a new, annual, all alcoholic beverages, on-premises, restaurant liquor license, for the restaurant it proposes to open at 5 Macy's Lane, Nantucket Town and County, Commonwealth of Massachusetts (formerly the location of A.K. Diamonds). Further to that, enclosed, please find the following:

1. Proof of Payment of the ABCC's Filing Fee;
2. Monetary Transmittal Form;
3. New Retail License Application;
4. Manager Application;
5. Vote of the Applicant Entity;
6. Business Structure Documents;
7. CORI for the proposed manager and the individuals with a beneficial interest in the

license;

8. Proof of Citizenship for the Proposed Manager;
9. The Applicant's Lease, Evidencing its Right to Occupy the Premises;
10. Floor Plans;
11. Abutter Notification, and
12. The local Filing Fee.

Please let me know if you have any questions. I can be reach by email at bryan@nantucketlawfirm.com or by phone at 508-228-4455.

Sincerely,

Bryan Swain

Bryan J. Swain, Esq.

Encl.
CC: Casa Real Restaurant and Bar, Inc.

TRANSMITTAL FORM

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION
MONETARY TRANSMITTAL FORM

APPLICATION FOR A NEW LICENSE

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.

ECRT CODE: RETA

Please make $200.00 payment here: ABCC PAYMENT WEBSITE

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)

ENTITY/ LICENSEE NAME CASA REAL RESTAURANT & BAR INC. d/b/a Casa Real Restaurant & Bar

ADDRESS 5 Macys Lane

CITY/TOWN Nantucket STATE MA ZIP CODE 02554

For the following transactions (Check all that apply):

☒ New License
☐ Transfer of License
☐ Change of Manager
☐ Change of Officers/ Directors/LLC Managers

☐ Change of Location
☐ Alteration of Licensed Premises
☐ Change Corporate Name
☐ Change of Ownership Interest (LLC Members/ LLP Partners, Trustees)

☐ Change of Class (i.e. Annual / Seasonal)
☐ Change of License Type (i.e. club / restaurant)
☐ Change of Category (i.e. All Alcohol/Wine, Malt)
☐ Issuance/Transfer of Stock/New Stockholder
☐ Other

☐ Change Corporate Structure (i.e. Corp / LLC)
☐ Pledge of Collateral (i.e. License/Stock)
☐ Management/Operating Agreement
☐ Change of Hours
☐ Change of DBA

THE LOCAL LICENSING AUTHORITY MUST SUBMIT THIS APPLICATION ONCE APPROVED VIA THE ePLACE PORTAL:

Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150-2358

NEW LICENSE APPLICATION

The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
www.mass.gov/abcc

APPLICATION FOR A NEW LICENSE

Municipality: Nantucket

1. LICENSE CLASSIFICATION INFORMATION

ON/OFF-PREMISES	TYPE	CATEGORY	CLASS
On-Premises-12	§12 Restaurant	All Alcoholic Beverages	Annual

Please provide a narrative overview of the transaction(s) being applied for. On-premises applicants should also provide a description of the intended theme or concept of the business operation. Attach additional pages, if necessary.

The Applicant is applying for an annual, all-alcoholic beverages liquor license, for the property located at 5 Macy's Lane, Nantucket, MA in connection with its Mexican-style restaurant. Alcohol services will end at 1:00 a.m.

Is this license application pursuant to special legislation? ○ Yes ● No Chapter ____ Acts of ____

2. BUSINESS ENTITY INFORMATION

The entity that will be issued the license and have operational control of the premises.

Entity Name: CASA REAL RESTAURANT & BAR INC.

FEIN: [redacted]

DBA: CASA REAL RESTAURANT & BAR

Manager of Record: MAYRA ESCOBAR

Street Address: 5 Macy's Lane, Nantucket, MA 02554

Phone: 508-332-4770

Email: aguilarma82@yahoo.com

Alternative Phone: 508-332-0296

Website: N/A

3. DESCRIPTION OF PREMISES

Please provide a complete description of the premises to be licensed, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage. You must also submit a floor plan.

Basement and first floor in commercial building, and outdoor patio. First floor contains approximately 2,202 s.f., including restrooms, lobby, hallways, dining and seating areas, bar, kitchen and coolers. Basement containing approximately 1,938 s.f., including office, open areas, storage areas, wine room, bathroom and coolers. Secured outdoor patio, containing approximately 1,030 s.f., with seasonal ancillary bar and seating area.

Total Square Footage: 5,200

Number of Entrances: 3

Seating Capacity: 89

Number of Floors: 2

Number of Exits: 3

Occupancy Number: 89

4. APPLICATION CONTACT

The application contact is the person whom the licensing authorities should contact regarding this application.

Name: Bryan J. Swain

Phone: 508-228-4455

Title: Attorney

Email: bryan@nantucketlawfirm.com

5. CORPORATE STRUCTURE

Entity Legal Structure: Corporation

Date of Incorporation: October 2, 2023

State of Incorporation: Massachusetts

Is the Corporation publicly traded? ○ Yes ● No

6. PROPOSED OFFICERS, STOCK OR OWNERSHIP INTEREST

List all individuals or entities that will have a direct or indirect, beneficial or financial interest in this license (E.g. Stockholders, Officers, Directors, LLC Managers, LLP Partners, Trustees etc.). Attach additional page(s) provided, if necessary, utilizing Addendum A.

- The individuals and titles listed in this section must be identical to those filed with the Massachusetts Secretary of State.
- The individuals identified in this section, as well as the proposed Manager of Record, must complete a CORI Release Form.
- Please note the following statutory requirements for Directors and LLC Managers:
  On Premises (E.g.Restaurant/ Club/Hotel) Directors or LLC Managers - At least 50% must be US citizens;
  Off Premises(Liquor Store) Directors or LLC Managers - All must be US citizens and a majority must be Massachusetts residents.
- If you are a Multi-Tiered Organization, please attach a flow chart identifying each corporate interest and the individual owners of each entity as well as the Articles of Organization for each corporate entity. Every individual must be identified in Addendum A.

Name of Principal	Residential Address	SSN	DOB
MAYRA ESCOBAR	[redacted]	[redacted]	[redacted]

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
President, Treasurer	50 %	○ Yes ● No	● Yes ○ No	● Yes ○ No

Name of Principal	Residential Address	SSN	DOB
SALVADOR AGUILAR PORTILLO	[redacted]	[redacted]	[redacted]

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
Secretary, Director	50 %	● Yes ○ No	● Yes ○ No	● Yes ○ No

Name of Principal	Residential Address	SSN	DOB

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
		○ Yes ○ No	○ Yes ○ No	○ Yes ○ No

Name of Principal	Residential Address	SSN	DOB

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
		○ Yes ○ No	○ Yes ○ No	○ Yes ○ No

Name of Principal	Residential Address	SSN	DOB

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
		○ Yes ○ No	○ Yes ○ No	○ Yes ○ No

Additional pages attached? ○ Yes ● No

CRIMINAL HISTORY

Has any individual listed in question 6, and applicable attachments, ever been convicted of a State, Federal or Military Crime? If yes, attach an affidavit providing the details of any and all convictions. ○ Yes ● No

APPLICATION FOR A NEW LICENSE

6A. INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Does any individual or entity identified in question 6, and applicable attachments, have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages? Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

6B. PREVIOUSLY HELD INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Has any individual or entity identified in question 6, and applicable attachments, ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held? Yes ☐ No ☒
If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

6C. DISCLOSURE OF LICENSE DISCIPLINARY ACTION

Have any of the disclosed licenses listed in question 6Aor 6B ever been suspended, revoked or cancelled?
Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Date of Action	Name of License	City	Reason for suspension, revocation or cancellation

7. OCCUPANCY OF PREMISES

Please complete all fields in this section. Please provide proof of legal occupancy of the premises.

- If the applicant entity owns the premises, a deed is required.
- If leasing or renting the premises, a signed copy of the lease is required.
- If the lease is contingent on the approval of this license, and a signed lease is not available, a copy of the unsigned lease and a letter of intent to lease, signed by the applicant and the landlord, is required.
- If the real estate and business are owned by the same individuals listed in question 6, either individually or through separate business entities, a signed copy of a lease between the two entities is required.

Please indicate by what means the applicant will occupy the premises: Own

Landlord Name: N/A

Landlord Phone: N/A

Landlord Email: N/A

Landlord Address: N/A

Lease Beginning Date: N/A

Rent per Month: N/A

Lease Ending Date: N/A

Rent per Year: N/A

Will the Landlord receive revenue based on percentage of alcohol sales? ○ Yes ● No

APPLICATION FOR A NEW LICENSE

8. FINANCIAL DISCLOSURE

A. Purchase Price for Real Estate	
B. Purchase Price for Business Assets	100,000.00
C. Other * (Please specify below)	
D. Total Cost	100,000.00

*Other Cost(s): (i.e. Costs associated with License Transaction including but not limited to: Property price, Business Assets, Renovations costs, Construction costs, Initial Start-up costs, Inventory costs, or specify other costs):"

SOURCE OF CASH CONTRIBUTION

Please provide documentation of available funds. (E.g, Bank or other Financial institution Statements, Bank Letter, etc.)

Name of Contributor	Amount of Contribution
Total:	

SOURCE OF FINANCING

Please provide signed financing documentation.

Name of Lender	Amount	Type of Financing	Is the lender a licensee pursuant to M.G.L. Ch. 138.
N/A			○ Yes ○ No
			○ Yes ○ No
			○ Yes ○ No
			○ Yes ○ No

FINANCIAL INFORMATION

Provide a detailed explanation of the form(s) and source(s) of funding for the cost identified above.

9. PLEDGE INFORMATION

Please provide signed pledge documentation.

Are you seeking approval for a pledge? ○ Yes ● No

Please indicate what you are seeking to pledge (check all that apply) ☐ License ☐ Stock ☐ Inventory

To whom is the pledge being made?

10. MANAGER APPLICATION

A. MANAGER INFORMATION

The individual that has been appointed to manage and control the licensed business and premises.

Proposed Manager Name: MAYRA ESCOBAR

Date of Birth: [redacted]

SSN: [redacted]

Residential Address: [redacted]

Email: aguilarma82@yahoo.com

Phone: [redacted]

Please indicate how many hours per week you intend to be on the licensed premises: 40 +

B. CITIZENSHIP/BACKGROUND INFORMATION

Are you a U.S. Citizen?* ● Yes ○ No *Manager must be a U.S. Citizen

If yes, attach one of the following as proof of citizenship US Passport, Voter's Certificate, Birth Certificate or Naturalization Papers.

Have you ever been convicted of a state, federal, or military crime? ○ Yes ● No

If yes, fill out the table below and attach an affidavit providing the details of any and all convictions. Attach additional pages, if necessary, utilizing the format below.

Date	Municipality	Charge	Disposition

C. EMPLOYMENT INFORMATION

Please provide your employment history. Attach additional pages, if necessary, utilizing the format below.

Start Date	End Date	Position	Employer	Supervisor Name
2015	Current	Owner	Salvadoreña Mini-Mart	Mayra Escobar
2011	Current	Owner	MAYRA MAIDS CLEANING SERVICE INC	Mayra Escobar

D. PRIOR DISCIPLINARY ACTION

Have you held a beneficial or financial interest in, or been the manager of, a license to sell alcoholic beverages that was subject to disciplinary action? ○ Yes ● No If yes, please fill out the table. Attach additional pages, if necessary, utilizing the format below.

Date of Action	Name of License	State	City	Reason for suspension, revocation or cancellation

I hereby swear under the pains and penalties of perjury that the information I have provided in this application is true and accurate:

Manager's Signature:

Date: 10/17/2023

Mayra Escobar

11. MANAGEMENT AGREEMENT

Are you requesting approval to utilize a management company through a management agreement? ○ Yes ● No

If yes, please fill out section 11.

Please provide a narrative overview of the Management Agreement. Attach additional pages, if necessary.

N/A

IMPORTANT NOTE: A management agreement is where a licensee authorizes a third party to control the daily operations of the license premises, while retaining ultimate control over the license, through a written contract. *This does not pertain to a liquor license manager that is employed directly by the entity.*

11A. MANAGEMENT ENTITY

List all proposed individuals or entities that will have a direct or indirect, beneficial or financial interest in the management Entity (E.g. Stockholders, Officers, Directors, LLC Managers, LLP Partners, Trustees etc.).

Entity Name
Address
Phone

Name of Principal
Residential Address
SSN
DOB

Title and or Position
Percentage of Ownership
Director ○ Yes ○ No
US Citizen ○ Yes ○ No
MA Resident ○ Yes ○ No

Name of Principal
Residential Address
SSN
DOB

Title and or Position
Percentage of Ownership
Director ○ Yes ○ No
US Citizen ○ Yes ○ No
MA Resident ○ Yes ○ No

Name of Principal
Residential Address
SSN
DOB

Title and or Position
Percentage of Ownership
Director ○ Yes ○ No
US Citizen ○ Yes ○ No
MA Resident ○ Yes ○ No

Name of Principal
Residential Address
SSN
DOB

Title and or Position
Percentage of Ownership
Director ○ Yes ○ No
US Citizen ○ Yes ○ No
MA Resident ○ Yes ○ No

CRIMINAL HISTORY

Has any individual identified above ever been convicted of a State, Federal or Military Crime? ○ Yes ○ No

If yes, attach an affidavit providing the details of any and all convictions.

11B. EXISTING MANAGEMENT AGREEMENTS AND INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Does any individual or entity identified in question 11A, and applicable attachments, have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages; and or have an active management agreement with any other licensees?

Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

11C. PREVIOUSLY HELD INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Has any individual or entity identified in question 11A, and applicable attachments, ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held?

Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

11D. PREVIOUSLY HELD MANAGEMENT AGREEMENT

Has any individual or entity identified in question 11A, and applicable attachments, ever held a management agreement with any other Massachusetts licensee?

Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Licensee Name	License Type	Municipality	Date(s) of Agreement

11E. DISCLOSURE OF LICENSE DISCIPLINARY ACTION

Has any of the disclosed licenses listed in questions in section 11B, 11C, 11D ever been suspended, revoked or cancelled?

Yes ☐ No ☒ If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Date of Action	Name of License	City	Reason for suspension, revocation or cancellation

11F. TERMS OF AGREEMENT

a. Does the agreement provide for termination by the licensee? Yes ☐ No ☐

b. Will the licensee retain control of the business finances? Yes ☐ No ☐

c. Does the management entity handle the payroll for the business? Yes ☐ No ☐

d. Management Term Begin Date ________ e. Management Term End Date ________

f. How will the management company be compensated by the licensee? (check all that apply)

- ☐ $ per month/year (indicate amount) ________
- ☐ % of alcohol sales (indicate percentage) ________
- ☐ % of overall sales (indicate percentage) ________
- ☐ other (please explain) ________

ABCC Licensee Officer/LLC Manager		**Management Agreement Entity Officer/LLC Manager**	
Signature:		Signature:	
Title:		Title:	
Date:		Date:	

ADDITIONAL INFORMATION

Please utilize this space to provide any additional information that will support your application or to clarify any answers provided above.

APPLICANT'S STATEMENT

I, MAYRA ESCOBAR the: ☐ sole proprietor; ☐ partner; ☐ corporate principal; ☐ LLC/LLP manager

Authorized Signatory

of CASA REAL RESTAURANT & BAR INC

Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

(1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;

(2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;

(3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;

(4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;

(5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;

(6) I understand that all statements and representations made become conditions of the license;

(7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;

(8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and

(9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.

(10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature:

Date: 10/17/2023

Title: PRESIDENT and TREASURER

VOTE

ENTITY VOTE

The Board of Directors or LLC Managers of CASA REAL RESTAURANT & BAR INC
Entity Name

duly voted to apply to the Licensing Authority of Nantucket and the
City/Town

Commonwealth of Massachusetts Alcoholic Beverages Control Commission on October 17, 2023
Date of Meeting

For the following transactions (Check all that apply):

☒ New License
☐ Transfer of License
☐ Change of Manager
☐ Change of Officers/ Directors/LLC Managers

☐ Change of Location
☐ Alteration of Licensed Premises
☐ Change Corporate Name
☐ Change of Ownership Interest (LLC Members/ LLP Partners, Trustees)

☐ Change of Class (i.e. Annual / Seasonal)
☐ Change of License Type (i.e. club / restaurant)
☐ Change of Category (i.e. All Alcohol/Wine, Malt)
☐ Issuance/Transfer of Stock/New Stockholder
☐ Other

☐ Change Corporate Structure (i.e. Corp / LLC)
☐ Pledge of Collateral (i.e. License/Stock)
☐ Management/Operating Agreement
☐ Change of Hours
☐ Change of DBA

"VOTED: To authorize MAYRA ESCOBAR
Name of Person

to sign the application submitted and to execute on the Entity's behalf, any necessary papers and do all things required to have the application granted."

"VOTED: To appoint MAYRA ESCOBAR
Name of Liquor License Manager

as its manager of record, and hereby grant him or her with full authority and control of the premises described in the license and authority and control of the conduct of all business therein as the licensee itself could in any way have and exercise if it were a natural person residing in the Commonwealth of Massachusetts."

A true copy attest,

Corporate Officer /LLC Manager Signature

(Print Name)

For Corporations ONLY

A true copy attest,

Corporation Clerk's Signature

MAYRA ESCOBAR

(Print Name)

BUSINESS STRUCTURE DOCUMENTS

The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee: $500.00

Secretary of the Commonwealth, Corporations Division
One Ashburton Place, 17th floor
Boston, MA 02108-1512
Telephone: (617) 727-9640

Certificate of Organization
(General Laws, Chapter)

Identification Number: 001634458

1. The exact name of the limited liability company is: MONARCA LLC

2a. Location of its principal office:
No. and Street: 2 SCOTTS WAY
City or Town: NANTUCKET State: MA Zip: 02554 Country: USA

2b. Street address of the office in the Commonwealth at which the records will be maintained:

No. and Street: 2 SCOTTS WAY
City or Town: NANTUCKET State: MA Zip: 02554 Country: USA

3. The general character of business, and if the limited liability company is organized to render professional service, the service to be rendered:
THE GENERAL CHARACTER OF THE BUSINESS OF THE LIMITED LIABILITY COMPANY IS TO ACQUIRE, OWN, INVEST IN, HOLD, MAINTAIN, DEVELOP, IMPROVE, FINANCE, MORTGAGE, LEASE, OPERATE, SELL, TRANSFER, CONVEY, AND OTHERWISE DEAL WITH ITS, DIRECT OR INDIRECT, INTERESTS IN REAL PROPERTY, TOGETHER WITH SUCH OTHER ACTIVITIES AS MAY BE NECESSARY, ADVISABLE OR INCIDENTAL IN CONNECTION THEREWITH AND, FURTHER, TO ENGAGE IN ANY OTHER LAWFUL ACT OR ACTIVITY FOR WHICH LIMITED LIABILITY COMPANIES MAY BE FORMED UNDER THE MASSACHUSETTS LIMITED LIABILITY COMPANY ACT, AS SUCH ACT MAY BE AMENDED, MODIFIED, OR REPLACED FROM TIME TO TIME.

4. The latest date of dissolution, if specified:

5. Name and address of the Resident Agent:
Name: DAVID J. BUCKLEY, ESQ.
No. and Street: 12 MAIN STREET, 2ND FLOOR
PO BOX 5027
City or Town: NANTUCKET State: MA Zip: 02554 Country: USA

I, DAVID J. BUCKLEY, ESQ. resident agent of the above limited liability company, consent to my appointment as the resident agent of the above limited liability company pursuant to G. L. Chapter 156C Section 12.

6. The name and business address of each manager, if any:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
MANAGER	MAYRA E. ESCOBAR	2 SCOTTS WAY NANTUCKET, MA 02554 USA

MANAGER	SALVADOR A. AGUILAR-PORTILLO	2 SCOTTS WAY NANTUCKET, MA 02554 USA

7. The name and business address of the person(s) in addition to the manager(s), authorized to execute documents to be filed with the Corporations Division, and at least one person shall be named if there are no managers.

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code

8. The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	MAYRA E. ESCOBAR	2 SCOTTS WAY NANTUCKET, MA 02554 USA
REAL PROPERTY	SALVADOR A. AGUILAR-PORTILLO	2 SCOTTS WAY NANTUCKET, MA 02554 USA

9. Additional matters:

SIGNED UNDER THE PENALTIES OF PERJURY, this 1 Day of February, 2023,
DAVID J. BUCKLEY, ESQ.
(The certificate must be signed by the person forming the LLC.)

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

February 01, 2023 05:46 PM

William Francis Galvin

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

The Commonwealth of Massachusetts, William Francis Galvin

Corporations Division

One Ashburton Place - Floor 17, Boston MA 02108-1512 | Phone: 617-727-9640

Articles of Organization

(General Laws, Chapter 156D, Section 2.02; 950 CMR 113.16)

Minimum Filing Fee: $250.00

Identification Number: 001706430 (number will be assigned)

ARTICLE I

The exact name of the corporation is:

CASA REAL RESTAURANT & BAR INC

ARTICLE II

Unless the articles of organization otherwise provide, all corporations formed pursuant to G.L. C156D have the purpose of engaging in any lawful business. Specify if you want a more limited purpose:

ARTICLE III

State the total number of shares and par value, if any, of each class of stock that the corporation is authorized to issue. All corporations must authorize stock. If only one class or series is authorized, it is not necessary to specify any particular designation.

Class of Stock	Par value per share (Enter 0 if no Par)	Total authorized number of shares	Total authorized par value	Total issued and outstanding number of shares
CNP	0	100,000	0	100,000

ARTICLE IV

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the corporation must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

ARTICLE V

The restrictions, if any, imposed by the articles of organization upon the transfer of shares of stock of any class are:

ARTICLE VI

Other lawful provisions, and if there are no provisions, this article may be left blank.

ARTICLE VII

The effective date of organization shall be the date and time the articles were received for filing if the articles are not rejected within the time prescribed by law. If a later effective date is desired, specify such date, which may not be later than ninety (90) days from the date and time of filing

Later Effective Date (mm/dd/yyyy): Time (HH:MM)

ARTICLE VIII

The information contained in Article VIII is not a permanent part of the articles of organization.

a,b. The street address of the initial registered office of the corporation in the commonwealth and the name of the initial registered agent at the registered office:

Agent name: MAYRA ESCOBAR

Number and street: 5 MACYS LN

Address 2:

City or town: NANTUCKET State: MA Zip code: 02554

c. The names and street addresses of the individuals who will serve as the initial directors, president, treasurer and secretary of the corporation (an address need not be specified if the business address of the officer or director is the same as the principal office location):

Title	Individual Name	Address
PRESIDENT	MAYRA ESCOBAR	2 SCOTTS WAY NANTUCKET, MA 02554 USA
TREASURER	MAYRA ESCOBAR	2 SCOTTS WAY NANTUCKET, MA 02554 USA
SECRETARY	SALVADOR AGUILAR PORTILLO	2 SCOTTS WAY NANTUCKET, MA 02554 USA
DIRECTOR	SALVADOR AGUILAR PORTILLO	2 SCOTTS WAY NANTUCKET, MA 02554 USA

d. The fiscal year end (i.e., tax year) of the corporation:

December 31

e. A brief description of the type of business in which the corporation intends to engage:

RESTAURANT AND BAR SERVICES

f. The street address (post office boxes are not acceptable) of the principal office of the corporation:

Number and street: 5 MACYS LN

Address 2:

City or town: NANTUCKET State: MA Zip code: 02554

Country: UNITED STATES

g. Street address where the records of the corporation required to be kept in the Commonwealth are located (post office boxes are not acceptable):

Number and street: 5 MACYS LN

Address 2:

City or town: NANTUCKET State: MA Zip code: 02554

Country: UNITED STATES

Which is:

☑ its principal office ☐ an office of its transfer agent

☐ an office of its secretary/assistant secretary ☐ its registered office

Signed this 2 Day of October, 2023 at 14:10 PM by the incorporator(s). (If an existing corporation is acting as incorporator, type in the exact name of the business entity, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said business entity and the title he/she holds or other authority by which such action is taken.)

MAYRA ESCOBAR

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

October 02, 2023 02:48 PM

William Francis Galvin

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

LEGAL RIGHT TO OCCUPY

2023 00176616
Cert: U42416 Doc: UDD
Registered: 03/09/2023 03:07 PM

MASSACHUSETTS QUITCLAIM DEED

RICHARD J. DIAMOND AND JEANNE A. DIAMOND, TRUSTEES OF GEM REALTY TRUST UNDER A DECLARATION OF TRUST DATED NOVEMBER 1, 1996, FILED WITH NANTUCKET REGISTRY DISTRICT OF THE LAND COURT AS DOCUMENT NO. 73921, with an address of PO Box 2644, Nantucket, MA 02584, hereinafter referred to as "Grantor",

For consideration paid, and in full consideration of, THREE MILLION TWO HUNDRED THOUSAND AND 00/100 ($3,200,000.00) DOLLARS, the receipt and sufficiency of which is hereby acknowledged,

Grants to **MONARCA LLC, A MASSACHUSETTS LIMITED LIABILITY COMPANY,** with an address of 2 Scotts Way, Nantucket, MA 02554, hereinafter "Grantee",

With QUITCLAIM COVENANTS,

That certain condominium unit commonly known as 7 Macys Lane, Nantucket, Massachusetts, being more particularly described as Unit A-1 in the AK Diamonds Condominium created pursuant to MGL c. 183A by Master Deed dated March 26, 2010 and filed with Nantucket Registry District of the Land Court as Document No. 132558 noted on Certificate of Title No. C-71 with an undivided 50.00% interest in the common areas and facilities of the Condominium and the organization of unit owners through which the Condominium is managed and regulated, (b) the exclusive right to use the parking space and storage area, if any, assigned to the Units, and (c) such other rights and easements appurtenant to the Units as may be set forth in any document governing the operation of the Condominium, including without limitation the Master Deed, the By-Laws of the organization of unit owners, the Declaration of Trust registered as Document No. 132559 at the Nantucket County Registry District of the Land Court, and any administrative rules and regulations adopted pursuant thereto and as shown on the Site Plan entitled "Master Deed Site Plan AK Diamonds Condominium, #16 Macy's Lane," dated May 5, 2010, prepared by Blackwell and Associates, Inc. recorded with the Nantucket Registry of Deeds as Plan Non. 2011-3. The Condominium consists of that certain parcel of land, together with the buildings thereon, located in Nantucket, Nantucket County, Massachusetts, now known and numbered as 7 Macy's Lane, shown on plans recorded with Nantucket Deeds in No. 2011-3.

For Seller's title see Certificate of Title No. C-71.

We, Richard J. Diamond and Jeanne A. Diamond, hereby certify that, as of this date, we are the only Trustees of Gem Realty Trust under a Declaration of Trust dated November 1, 1996, filed with Nantucket Registry District of the Land Court as Document No. 73921, and further certify (a) that said Trust has not been amended, terminated or revoked and is in full force and effect; (b) that the Trustees executing and delivering this deed have been duly authorized by the direction of all beneficiaries of said Trust, to execute and deliver the same and that such instrument is valid, binding, effective and legally enforceable in accordance with said Trust instrument; (c) that no beneficiary, spouse or civil union partner of a beneficiary, former spouse or former civil union partner of a beneficiary resides in the property as their primary residence or is entitled to claim the benefit of an existing estate of homestead and (d) that no beneficiary of the Trust is a minor, incompetent to act, a corporation selling all or substantially all of its Massachusetts assets, a partnership, a trust, or a personal representative of an estate subject to estate tax liens.

[*the signature page follows.*]

WITNESS Grantor's hand this 17 day of February, 2023.

{Seal}

Richard J. Diamond, Trustee of
Gem Realty Trust under a Declaration of Trust

J. Diamond {Seal}

Jeanne A. Diamond, Trustee of
Gem Realty Trust under a Declaration of Trust

STATE OF FLORIDA

COUNTY OF Sarasota

On this 17 day of February, 2023, before me, the undersigned notary public, personally appeared the above-named, Richard J. Diamond and Jeanne A. Diamond, Trustees of Gem Realty Trust under a Declaration of Trust dated November 1, 1996, filed with Nantucket Registry District of the Land Court as Document No. 73921, proved to me through satisfactory evidence of identification, which were NY DLs, to be the persons who signed the preceding or attached document in my presence, and acknowledged to me that they signed it voluntarily for its stated purpose, by their free act and deed.

Tim Meyers

Notary Public Signature

Notary Public State of Florida
Tim Meyers
My Commission
HH 168364
Exp. 8/23/2025

My Commission Expires: 8/23/25

MASSACHUSETTS EXCISE TAX KHB
Nantucket County ROD #16 001
Date: 03/09/2023 03:07 PM
Ctrl# 466427 26091 Doc# 00176616
Fee: $14,592.00 Cons: $3,200,000.00

NANTUCKET LAND BANK
CERTIFICATE
☑ Paid $ 64000 –
☐ Exempt
☐ Non-applicable
45435 3/9/23
No. Date
Authorization

DOC No: 00176616

NANTUCKET COUNTY LAND COURT
REGISTRY DISTRICT

** RECEIVED FOR REGISTRATION **
On: Mar 09,2023 at 03:07P
Document Fee: 155.00 Rec Total:$15,767

CERTIFICATE No: U 42416

Also noted on CERT C71

.00

FROM THE OFFICE OF:

Beaudette and Swain, LLC
35 (D) Old South Road, P.O. Box 2049
Nantucket, MA 02554
www.NantucketLawFirm.com
(508) 228 - 4455

STANDARD COMMERCIAL LEASE

1. **PARTIES** LESSOR, which expression shall include **MONARCA, LLC**, its heirs, successors, and assigns where the context so admits ("LESSOR"),

does hereby lease to:

Lessee which expression shall include **CASA REAL RESTAURANT & BAR Inc.**, its successors, executors, administrators, and assigns where the context so admits ("LESSEE"), and the LESSEE hereby leases the following described premises:

2. **PREMISES** 5 Macys Lane, Nantucket Town and County, Commonwealth of Massachusetts, a/k/a Unit A-1 of the AK Diamonds Condominium, together with the right to use in common, with others entitled thereto, the hallways, stairways, and elevators, necessary for access to said leased premises, and lavatories nearest thereto (the "PREMISES").

3. **TERM** The term of this lease shall commence on October 15, 2023, and end on December 31, 2030.

4. **RENT** The LESSEE shall pay the LESSOR fixed rent at the rate of $12.00 dollars per year, payable in advance in monthly installments of $1.00, subject to proration in the case of any partial calendar month. All rent shall be payable without offset or deduction.

5. **SECURITY DEPOSIT** Upon the execution of this lease, the LESSEE shall pay to the LESSOR the amount of $0.00 dollars, which shall be held as a security for the LESSEE's performance as herein provided and refunded to the LESSEE at the end of this lease, without interest, subject to the LESSEE's satisfactory compliance with the conditions hereof.

6. RENT ADJUSTMENT **INTENTIONALLY OMITTED.**

7. TAX ESCALATION If the LESSOR obtains an abatement of any such excess real estate tax, a proportionate share of such abatement, less the reasonable fees and costs incurred in obtaining the same, if any, shall be refunded to the LESSEE.

8. OPERATING COST ESCALATION **INTENTIONALLY OMITTED.**

9. CONSUMER PRICE ESCALATION **INTENTIONALLY OMITTED.**

10. UTILITIES The LESSEE shall pay, as they become due, all bills for electricity and other utilities (whether they are used for furnishing heat or other purposes) that are furnished to the leased premises and presently separately metered, and all bills for fuel furnished to a separate tank servicing the leased premises exclusively. The LESSOR agrees to provide all other utility service and to furnish reasonably hot and cold water and reasonable heat and air conditioning (except to the extent that the same are furnished through separately metered utilities or separate fuel tanks as set forth above) to the leased premises, the hallways, stairways, elevators, and lavatories during normal business hours on regular business days of the heating and air conditioning seasons of each year, to furnish elevator service and to light passageways and stairways during business hours, and to furnish such cleaning service as is customary in similar buildings in said city or town, all subject to interruption due to any accident, to the making of repairs, alterations, or improvements, to labor difficulties, to trouble in obtaining fuel, electricity, service, or supplies from the sources from which they are usually obtained for said building, or to any cause beyond the LESSOR's control.

LESSOR shall have no obligation to provide utilities or equipment other than the utilities and equipment within the premises as of the commencement date of this lease. In the event LESSEE requires additional utilities or equipment, the installation and maintenance thereof shall be the LESSEE's sole obligation, provided that such installation shall be subject to the written consent of the LESSOR.

11. USE OF LEASED PREMISES

The LESSEE shall use the leased premises only for the purpose of Restaurant and any other purpose allowed by law.

12. COMPLIANCE WITH LAWS

The LESSEE acknowledges that no trade or occupation shall be conducted in the leased premises or use made thereof which will be unlawful, improper, noisy or offensive, or contrary to any law or any municipal by-law or ordinance in force in the city or town in which the premises are situated. Without limiting the generality of the foregoing:

A. The LESSEE shall not bring or permit to be brought or kept in or on the leased premises or elsewhere on the LESSOR's property any hazardous, toxic, inflammable, combustible or explosive fluid, material, chemical or substance, including without limitation any item defined as hazardous pursuant to Chapter 21E of the Massachusetts General Laws; and

B. The LESSEE shall be responsible for compliance with requirements imposed by the Americans with Disabilities Act relative to the layout of the leased premises and any work performed by the LESSEE therein.

13. FIRE INSURANCE

The LESSEE shall not permit any use of the leased premises which will make voidable any insurance on the property of which the leased premises are a part, or on the contents of said property or which shall be contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association, or any similar body succeeding to its powers. The LESSEE shall on demand reimburse the LESSOR, and all other tenants, all extra insurance premiums caused by the LESSEE's use of the premises.

14. MAINTENANCE - LESSEE'S OBLIGATIONS

The LESSEE agrees to maintain the leased premises in good condition, damage by fire and other casualty only excepted, and whenever necessary, to replace plate glass and other glass therein, acknowledging that the leased premises are now in good order and the glass whole. The LESSEE shall not permit the leased premises to be overloaded, damaged, stripped, or defaced, nor suffer any waste. LESSEE shall obtain written consent of LESSOR before erecting any sign on the premises.

15. MAINTENANCE – LESSOR'S OBLIGATIONS

The LESSOR agrees to maintain the structure of the building of which the leased premises are a part in the same condition as it is at the commencement of the term or as it may be put in during the term of this lease, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance is required because of the LESSEE or those for whose conduct the LESSEE is legally responsible.

16. ALTERATIONS – ADDITIONS

The LESSEE shall not make structural alterations or additions to the leased premises, but may make non-structural alterations provided the LESSOR consents thereto in writing, which consent shall not be unreasonably withheld or delayed. All such allowed alterations shall be at LESSEE's expense and shall be in a quality at least equal to the present construction. LESSEE shall not permit any mechanics' liens, or similar liens, to remain upon the leased premises for labor and material furnished to LESSEE or claimed to have been furnished to LESSEE in connection with work of any character performed or claimed to have been performed at the direction of LESSEE and shall cause any such lien to be released of record forthwith without cost to LESSOR.

Any alterations or improvements made by the LESSEE shall become the property of the LESSOR at the termination of occupancy as provided herein.

17. ASSIGNMENT – SUBLEASING

The LESSEE shall not assign or sublet the whole or any part of the leased premises without LESSOR's prior written consent. Notwithstanding such consent, LESSEE shall remain liable to LESSOR for the payment of all rent and for the full performance of the covenants and conditions of this lease.

18. SUBORDINATION

This lease shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, now or at any time hereafter, a lien or liens on the property of which the leased premises are a part and the LESSEE shall, when requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this lease to said mortgages, deeds of trust or other such instruments in the nature of a mortgage, deeds of trust or other such instruments in the nature of a mortgage.

19. LESSOR'S ACCESS

The LESSOR or agents of the LESSOR may, at reasonable times, enter to view the leased premises and may remove placards and signs not approved and affixed as herein provided, and make repairs and alterations as LESSOR should elect to do and may show the leased premises to others, and at any time within three (3) months before the expiration of the term, may affix to any suitable part of the leased premises a notice for letting or selling the leased premises or property of which the leased premises are a part and keep the same so affixed without hindrance or molestation.

20. INDEMNIFICATION AND LIABILITY

The LESSEE shall save the LESSOR harmless from all loss and damage occasioned by anything occurring on the leased premises unless caused by the negligence or misconduct of the LESSOR, and from all loss damage wherever occurring occasioned by any omission, fault, neglect or other misconduct of the LESSEE. The removal of snow and ice from the sidewalks bordering upon the leased premises shall be the Lessor's responsibility.

21. LESSEE'S LIABILITY INSURANCE

The LESSEE shall maintain with respect to the leased premises and the property of which the leased premises are a part comprehensive public liability insurance with property damage insurance in limits of $1M / $2M in responsible companies qualified to do business in Massachusetts and in good standing therein insuring the LESSOR as well as LESSEE against injury to persons or damage to property as provided. The LESSEE shall deposit with the LESSOR certificates for such insurance at or prior to the commencement of the term, and thereafter within thirty (30) days prior to the expiration of any such policies. All such insurance certificates shall provide that such policies shall not be cancelled without at least ten (10) days prior written notice to each assured named therein.

22. FIRE, CASUALTY – EMINENT DOMAIN

Should a substantial portion of the leased premises, or of the property of which they are a part, be substantially damaged by fire or other casualty, or be taken by eminent domain, the LESSOR may elect to terminate this lease. When such fire, casualty, or taking renders the leased premises substantially unsuitable for their intended use, a just and proportionate abatement of rent shall be made, and the LESSEE may elect to terminate this lease if:

(a) The LESSOR fails to give written notice within thirty (30) days of intention to restore leased premises, or
(b) The LESSOR fails to restore the leased premises to a condition substantially suitable for their intended use within ninety (90) days of said fire, casualty or taking.

The LESSOR reserves, and the LESSEE grants to the LESSOR, all rights which the LESSEE may have for damages or injury to the leased premises for any taking by eminent domain, except for damage to the LESSEE's fixtures, property, or equipment.

23. DEFAULT AND BANKRUPTCY

In the event that:

(a) The LESSEE shall default in the payment of any installment of rent or other sum herein specified and such default shall continue for ten (10) days after written notice thereof; or
(b) The LESSEE shall default in the observance or performance of any other of the LESSEE's covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) days after written notice thereof; or

(c) The LESSEE shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of LESSEE's property for the benefit of creditors,

then the LESSOR shall have the right thereafter, while such default continues, to re-enter and take complete possession of the leased premises, to declare the term of this lease ended, and remove the LESSEE's effects, without prejudice to any remedies which might be otherwise used for arrears of rent or other default. The LESSEE shall indemnify the LESSOR against all loss of rent and other payments which the LESSOR may incur by reason of such termination during the residue of the term. If the LESSEE shall default, after reasonable notice thereof, in the observance or performance of any conditions or covenants on LESSEE's part to be observed or performed under or by virtue of any of the provisions in any article of this lease, the LESSOR, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of the LESSEE. If the LESSOR makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to, reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations insured, with interest at the rate of 0% percent per annum and costs, shall be paid to the LESSOR by the LESSEE as additional rent.

24. NOTICE

Any notice from the LESSOR to the LESSEE relating to the leased premises or to the occupancy thereof, shall be deemed duly served, if left at the leased premises addressed to the LESSEE, or if mailed to the leased premises, registered or certified mail, return receipt requested, postage prepaid, addressed to the LESSEE. Any notice from the LESSEE to the LESSOR relating to the leased premises or to the occupancy thereof, shall be deemed duly served, if mailed to the LESSOR by registered or certified mail, return receipt requested, postage prepaid, addressed to the LESSOR at such address as the LESSOR may from time to time advise in writing. All rent notices shall be paid and sent to the LESSOR.

25. SURRENDER

The LESSEE shall at the expiration or other termination of this lease remove all LESSEE's goods and effects from the leased premises, (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the LESSEE, either inside or outside the leased premises). LESSEE shall deliver to the LESSOR the leased premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the leased premises, in good condition, damage by fire or other casualty only excepted. In the event of the LESSEE's failure to remove any of LESSEE's property from the premises, LESSOR is hereby authorized, without liability to LESSEE for loss or damage thereto, and at the sole risk of LESSEE, to remove and store any of the property at LESSEE's expense, or to retain same under LESSOR's control or to sell at public or private sale, without notice any or all of the property not so removed and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.

26. BROKERAGE **INTENTIONALLY OMITTED.**

27. CONDITION OF PREMISES Except as may be otherwise expressly set forth herein, the LESSEE shall accept the leased premises "as is" in their condition as of the commencement of the term of this lease, and the LESSOR shall be obligated to perform no work whatsoever in order to prepare the leased premises for occupancy by the LESSEE.

28. FORCE MAJEURE In the event that the LESSOR is prevented or delayed from making any repairs or performing any other covenant hereunder by reason of any cause reasonably beyond the control of the LESSOR, the LESSOR shall not be liable to the LESSEE therefor nor, except as expressly otherwise provided in case of casualty or taking, shall the LESSEE be entitled to any abatement or reduction of rent by reason thereof, nor shall the same give rise to a claim by the LESSEE that such failure constitutes actual or constructive eviction from the leased premises or any part thereof.

29. LATE CHARGE If rent or any other sum payable hereunder remains outstanding for a period of ten (10) days, the LESSEE shall pay to the LESSOR a late charge equal to one and one-half percent (1.5%) of the amount due for each month or portion thereof during which the arrearage continues.

30. LIABILITY OF OWNER No owner of the property of which the leased premises are a part shall be liable hereunder except for breaches of the LESSOR's obligations occurring during the period of such ownership. The obligations of the LESSOR shall be binding upon the LESSOR's interest in said property, but not upon other assets of the LESSOR, and no individual partner, agent, trustee, stockholder, officer, director, employee or beneficiary of the LESSOR shall be personally liable for performance of the LESSOR's obligations hereunder.

31. OTHER PROVISIONS **INTENTIONALLY OMITTED.**

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

SIGNATURE PAGE TO FOLLOW

SIGNATURE PAGE TO COMMERCIAL LEASE

IN WITNESS HEREOF, the said parties hereunto set their hands and seals this 17th day of October, 2023

LESSOR

MONARCA LLC

MAYRA ESCOBAR, Manager

LESSEE:

CASA REAL RESTAURANT & BAR INC

By: MAYRA ESCOBAR, President, Treasurer

ABUTTER NOTICES

PUBLIC NOTICE

Please be advised that the Select Board will hold a public hearing on Monday, November 13, 2023 at 11:00 AM to consider a New Common Victualler with Annual All-Alcoholic Beverages Restaurant and Live Entertainment License for Casa Real Restaurant & Bar Inc., d/b/a/ Casa Real Restaurant & Bar, located at 5 Macy’s Lane, Nantucket, MA 02554, Mayra Escobar, Proposed License Manager. The hearing will be held via Zoom Webinar. Please see meeting posting for remote participation and viewing links. For further information, please email licensing@police.nantucket-ma.gov.

J04 SELECT BOARD

TOWN OF NANTUCKET

LIQUOR LICENSE

LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF:

PROPERTY OWNER..Monarca, LLC
C/O Beaudette and Swain, LLC, 35 Old South Road, STE D

MAILING ADDRESS..PO BOX 2049, Nantucket, MA 02554

PROPERTY LOCATION....5 MACYS LN #A1

ASSESSORS MAP/PARCEL..68 / 40.1

SUBMITTED BY:..Bryan J. Swain, Esq.

SEE ATTACHED PAGES

I certify that the foregoing is a list of persons who are owners of land whose property directly touches the proposed property and churches and schools within 500 feet of the property, all as they appear on the most recent applicable tax list.

October 11, 2023

DATE

Mary L. Haley

Digitally signed by Mary L. Haley
Date: 2023.10.11 13:59:36 -04'00'

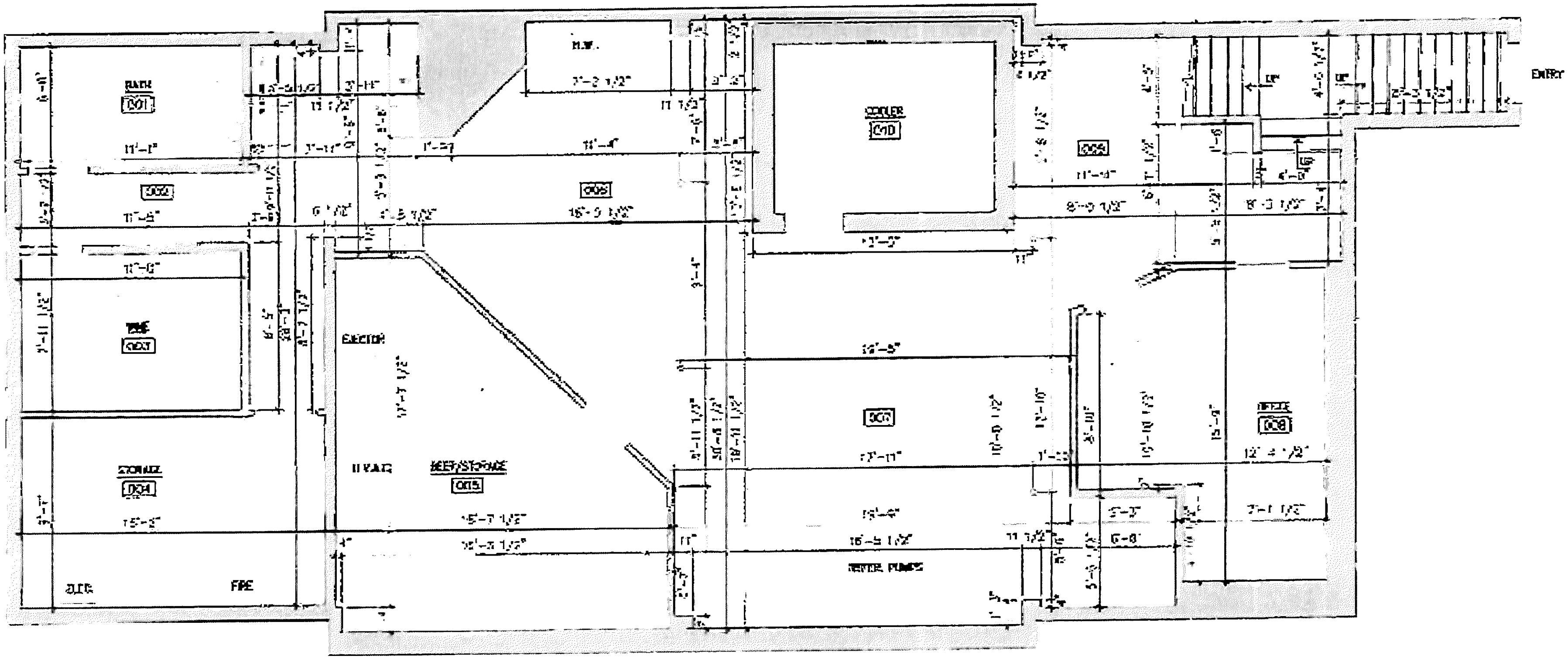
ASSESSOR'S OFFICE
TOWN OF NANTUCKET

Abutters Listing

MBLU	Lot	Lot Cut	Name Line 1	Name Line 2	Address Line 1	City	State	Zip	Location
68	40	5	7 MACYS LN LLC		332 PLEASANT ST	MARLBOROUGH	MA	01752	7A MACYS LN #D1
68	40	7	MACY REALTY LLC		61 OLD SOUTH RD PMB #152	NANTUCKET	MA	02554	1B MACYS LN #E2
68	334		KASCHULUK JEFFREY & THERESE		PO BOX 241	NANTUCKET	MA	02554	9 MACYS LN

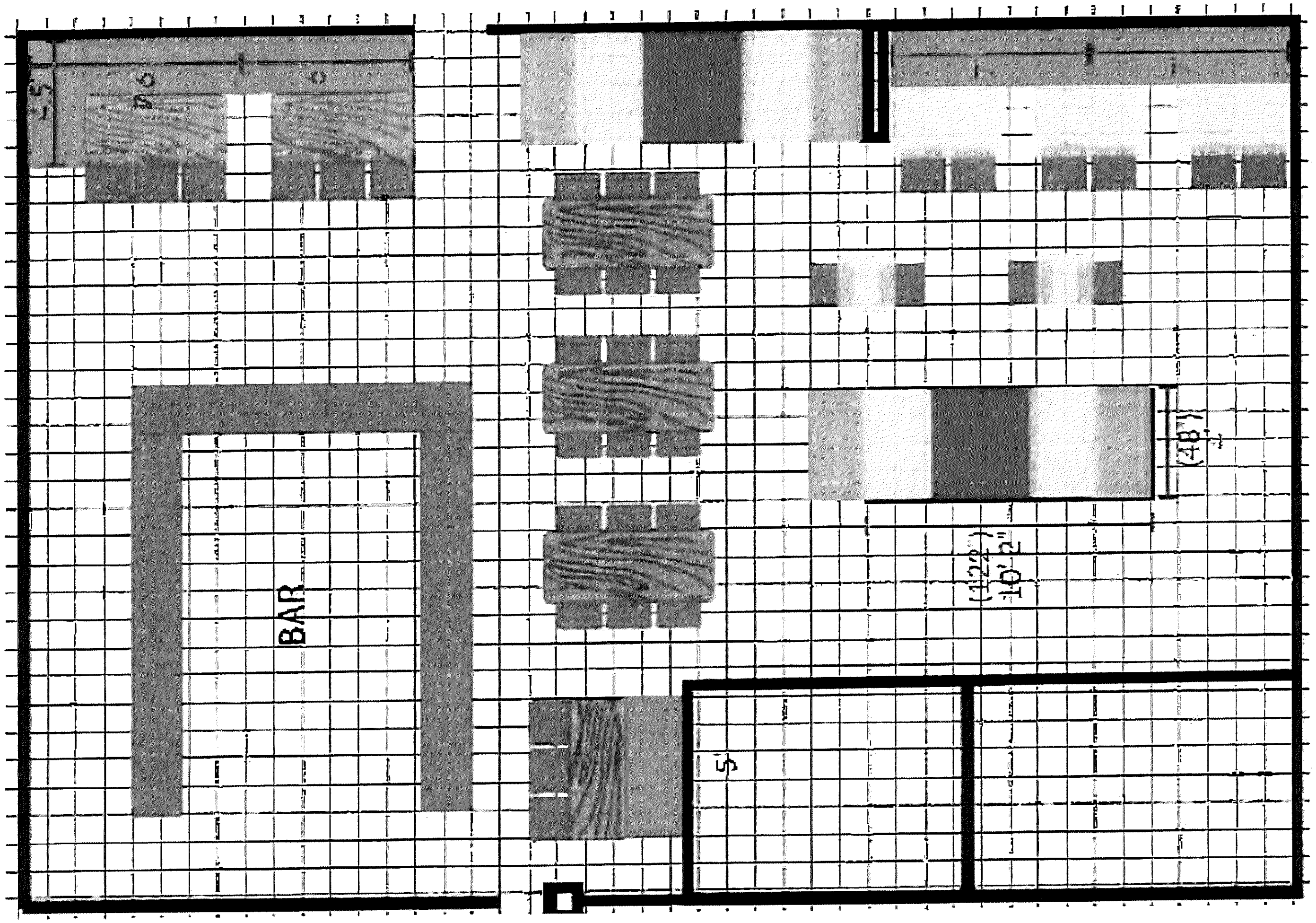
Count: 3

FLOOR PLANS

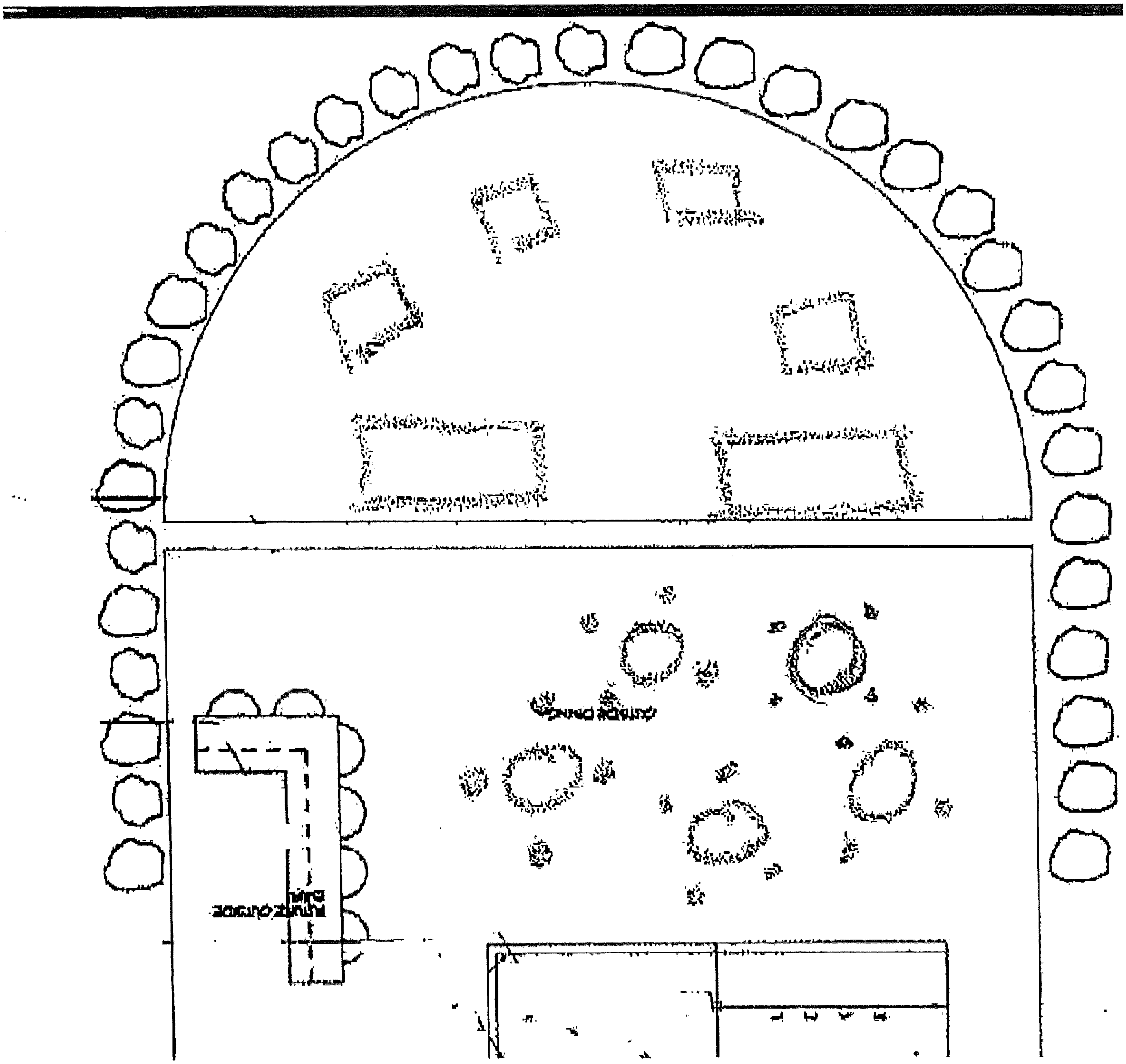


EXISTING BASEMENT PLAN FOR BUILDING A (1,938 sq.ft.)
SCALE: 1/4"=1'-0"
TOTAL sq.ft. 6,328

BASEMENT



First Floor



PATIO
Seating

LICENSE #: 0xxx-RS-0762 **LICENSE FEE: $3,250.00**

THE LICENSING BOARD *for the* TOWN OF NANTUCKET, MASSACHUSETTS

HEREBY GRANTS AN

ANNUAL RETAIL RESTAURANT LICENSE

TO EXPOSE, KEEP FOR SALE, AND TO SELL

ALL ALCOHOLIC BEVERAGES

TO BE CONSUMED ON THE PREMISES

BUSINESS: **Casa Real Restaurant & Bar, Inc.**
DBA: **Casa Real Restaurant & Bar**
PREMISES: **16 Macys Lane**
Nantucket, MA 02554
MANAGER: **Mayra Escobar**

ON PREMISES DESCRIBED AS:

Basement and first floor in commercial building, and outdoor patio. First floor contains approximately 2,202 sq.ft., including restrooms, lobby, hallways, dining and seating areas, bar, kitchen and coolers. Secured outdoor patio containing approximately 1 030 sq.ft. with seasonal ancillary bar and seating area.

The hours during which alcoholic beverages may be sold: In accordance with MGL Chapter 138 and amendments thereto with the local provision that patrons shall not be served alcoholic beverages before 8:00AM Monday through Saturday and 11:00AM on Sunday. **No alcohol service is permitted after 1:00AM** and patrons must be off the license premises and said **premises must be closed by 1:30AM**. Any restrictions apply as are on file with the local licensing authority. In accordance with Article 40 ATM 2001, Chapter 86.1 Board of Health Regulations Prohibit Smoking in Certain Places within the Town of Nantucket.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the Massachusetts General Laws, as amended and any rules or regulations made thereunder by the licensing authorities, including, but not limited to Chapter 250 of the Town of Nantucket Rules and Regulations Governing Alcoholic Beverages.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signature on this xx day of xxx

Chair, Select Board

THIS LICENSE WILL EXPIRE DECEMBER 31, 202X

**Unless earlier suspended, cancelled, or revoked*

This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

LICENSE FEE: $100.00

THE LICENSING BOARD *for the* TOWN OF NANTUCKET, MASSACHUSETTS

HEREBY GRANTS AN

ENTERTAINMENT LICENSE

► SEVEN DAYS ◄

BUSINESS: **Casa Real Restaurant & Bar, Inc.**
DBA: **Casa Real Restaurant & Bar**
PREMISES: **16 Macys Lane**
Nantucket, MA 02554
MANAGER: **Mayra Escobar**

LICENSED PREMISES DESCRIBED AS:

Basement and first floor in commercial building, and outdoor patio. First floor contains approximately 2,202 sq.ft., including restrooms, lobby, hallways, dining and seating areas, bar, kitchen and coolers. Secured outdoor patio containing approximately 1 030 sq.ft. with seasonal ancillary bar and seating area.

Approved Entertainment:

- **AMPLIFIED LIVE MUSIC, DJ, INSTRUMENTS AND VOCALISTS WITH AMPLIFICATION**
- **STREAMING MUSIC, TV**

Conditions of License:

- **HOURS: 11:00 am to 1:00 am; 7 Days**
- **EXTERIOR**: Pre-recorded background music only.
- **INTERIOR**: Pre-recorded and Live Entertainment with amplification.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of Section 183A, Chapter 140 of the Massachusetts General Laws, and any rules or regulations made thereunder by the licensing authorities.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signature on this xx day of xx.

Chair, Select Board

THIS LICENSE WILL EXPIRE DECEMBER 31, 202x

**Unless earlier suspended, cancelled, or revoked*

This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

A Current Certificate of Inspection with Approved Occupancy Must Always be Posted with this License.

LICENSE #: 04096-RS-0762 **LICENSE FEE: $3,250.00**

THE LICENSING BOARD *for the* TOWN OF NANTUCKET, MASSACHUSETTS

HEREBY GRANTS AN

ANNUAL RETAIL RESTAURANT LICENSE

TO EXPOSE, KEEP FOR SALE, AND TO SELL

ALL ALCOHOLIC BEVERAGES

TO BE CONSUMED ON THE PREMISES

BUSINESS: **Cocktail Court, LLC**
DBA: **Saltbox**
PREMISES: **16 Macys Lane**
Nantucket, MA 02554
MANAGER: **Norman T. Gauvin**

ON PREMISES DESCRIBED AS: Two story wooden structure with full cellar. First floor: 2 bathrooms, dining room, prep facility, 2 means of egress. Cellar: storage and mechanical. 2nd floor: dining room, 2 bathrooms. License includes liquor service in the interior restaurant and the adjacent back patio.

The hours during which alcoholic beverages may be sold: In accordance with MGL Chapter 138 and amendments thereto with the local provision that patrons shall not be served alcoholic beverages before 8:00AM Monday through Saturday and 11:00AM on Sunday. **No alcohol service is permitted after 1:00AM** and patrons must be off the license premises and said **premises must be closed by 1:30AM**. Any restrictions apply as are on file with the local licensing authority. In accordance with Article 40 ATM 2001, Chapter 86.1 Board of Health Regulations Prohibit Smoking in Certain Places within the Town of Nantucket.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the Massachusetts General Laws, as amended and any rules or regulations made thereunder by the licensing authorities, including, but not limited to Chapter 250 of the Town of Nantucket Rules and Regulations Governing Alcoholic Beverages.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signature on this

Chair, Select Board

THIS LICENSE WILL EXPIRE DECEMBER 31, 202x

**Unless earlier suspended, cancelled, or revoked*

This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

TOWN OF NANTUCKET MASS
INCORPORATED 1671

Agenda Item Summary

Agenda Item #	IV. 1.
Date	11/13/2023

Staff

Amy Baxter, Licensing Administrator

Subject

Liquor License Disciplinary Hearing – ***Mingo Corporation, LLC dba The Muse, 44 Surfside Road, License #00053-RS-0762***

Executive Summary

Mingo Corporation, dba The Muse at 44 Surfside Road, Michael O'Reilly, Manager has been noticed to appear before the Select Board to review a series of incidents on the licensed premises that may constitute a violation of Liquor License # 00053-RS-0762.

Staff Recommendation

The goal of this hearing is to review and discuss what we have identified as a pattern of behavior at The Muse and what steps the Licensee is taking to address these and other incidents the past year. We should not attempt to directly 'litigate' every detail of these two cases as they are still moving through the legal process. They are included to illustrate the concerning behavior of staff and patrons and how that is creating an unsafe atmosphere for the community.

We wish to review the operations of The Muse as a whole, what steps they are currently taking following these incidents and how they can move forward to avoid these problems in 2024.

Licensing is recommending the Board consider a Liquor License suspension of 5 days with 5 days held in abeyance pending any further violations in the next year. The Board can accept that or amend as they see fit. The timing of any suspension is determined by the Select Board. We believe this gives us room to work through this and provide an opportunity to move forward.

It is important here to note the Licensee, and in particular the Manager, Michael O'Reilly, has been extremely cooperative in these discussions and has been very proactive in taking steps to address these issues. The hearing will allow him to directly address these concerns and provide an account of all they are doing to prevent further problems.

Background/Discussion

Please see attached police reports and CFS (Calls for Service) Summary.

Impact: Environmental ☐ Fiscal ☐ Community☐ Other☐

N/A

Board/Commission Recommendation

N/A

Public Outreach

The Muse Manager was sent a hearing notice.

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

N/A

Attachments

Disciplinary Hearing Procedures; T.O.N. Liquor License Violations Guidelines; Notice of Hearing; NPD Police Reports (3); The Muse Licenses; The Muse Updated Security Policy

Brian W. Riley
Kopelman and Paige, P.C.
September 2, 2015

LIQUOR LICENSE DISCIPLINARY HEARING PROCEDURE

I. General Process

A. Give written notice to licensee pursuant to G.L. c.138, §23. If town personnel will supply pertinent information, you may request their presence at the hearing. Notice should include detailed statement of purpose of hearing (alleged violations of Chapter 138 and/or BOS Rules and Regulations) and potential for disciplinary action.

B. Chair calls the hearing to order, reads the notice and swears in the witnesses. Sworn testimony is not required by G.L. c.138, but always preferable when defending an order before the ABCC. All witnesses may be sworn in at once.

II. Enforcement Hearing

A. The complainant or town officer bringing complaint testifies first followed by any witnesses that they might have. This typically includes members of the Police Department; it can include eyewitness testimony or referring to written reports. They may be questioned by the licensee (or licensee's attorney) and by Board members, through the chairman.

B. At the conclusion of the Town's case, the licensee should be allowed to testify followed by any witnesses that they might have. They may be questioned by the Board, and the Board may wish to recall the Police Department to answer additional questions.

C. Both parties should be given a reasonable opportunity to offer evidence, examine witnesses and make a concluding statement.

D. Although the public may attend the hearing, no questions or general public comment should be allowed during the hearing.

IV. Closing the Hearing

A. After all testimony has been taken and all questions from the Board answered, a motion should be made to close the evidentiary portion of the hearing. Once closed, there should be no further testimony or documents accepted.

B. After closing the hearing, the Board should deliberate in open session and make a decision. A decision consists of two parts - findings of fact and the action taken by the Board, and both must be in the written decision to be found satisfactory by the ABCC. I recommend that any finding of fact be made by motion, e.g. "I move that the Board find that on September 1, 2015, the licensee violated G.L. c.138, §34 by serving alcohol to a minor" or "I move that the Board find that on September 1, 2015, the licensee violated Chapter 250, Section XIV (8) of the Board's Regulations by allowing patrons to remove drinks from the premises." This can be done with multiple motions if needed. If no violations are found, the Board can make that finding and the hearing would be complete.

C. After the Board has made its findings of fact and that a violation or violations occurred, the Chairman may then entertain a motion concerning the appropriate action to take – for example, written warning for first offense, suspension, revocation, cancellation for failure to exercise license (G.L. c.138, §77), etc. A motion should be made and the action voted on. The Board's sanction schedule [Chapter 250, Section XV (G)] are guidelines but may be varied in appropriate circumstances.

D. Written notice of the decision must be sent to the licensee. The notice should include the findings of fact and the action/discipline approved by the Board. The notice must also state that the licensee has five (5) days from receipt of the written decision to appeal the order to the ABCC.

§ 207-16. Violations and penalties.

A. Purpose. The purpose of this section is to improve the ability of the Board to prevent alcohol abuse and violation of the liquor laws of the Commonwealth and the requirements of the regulations. It is the intent of the Board that this section will help to achieve reasonable uniformity in the imposition of sanctions and to avoid confusion in the minds of the public, patrons and licensees due to a lack of understanding of the consequences of violating the liquor laws and the terms of liquor licenses. This section is intended to empower the Board to consider the circumstances of each case and provide a mechanism for which licensees can ensure their compliance with the regulations.

B. General provisions.

(1) No licensee shall permit any illegality to occur on the licensed premises. The manager shall at all times maintain order and decorum on the licensed premises and in the immediately surrounding area and shall cooperate with Town officials in ensuring safe and orderly licensed premises.

(2) All violations of the liquor laws and the terms of liquor licenses are to be reported to the Board by the Nantucket Police Department or by any licensee or manager that becomes aware of an offense involving the licensed premises within two weeks of said violation. Failure to report a violation involving the licensed premises constitutes a violation of the regulations and may subject the licensee to sanctions in accordance with the procedure set forth herein.

(3) Sanctions for offenses shall be consistent with the Town's general goals of protecting public safety and the general welfare. Sanctions will also be imposed with the goal of preventing future offenses.

(4) The nature and severity of the sanctions imposed by the Board will be decided according to the nature of the offense and the presence of aggravating or mitigating circumstances as further described herein.

(5) Sanctions may consist of any one or more of the following as appropriate: revocation of license; suspension of license; criminal prosecution of offenders by the Nantucket Police Department, including customers and patrons as deemed appropriate by the Police Chief; and/or mandatory participation in alcohol abuse and offense prevention programs.

(6) The Nantucket Police Department is encouraged to recommend to the Board the terms under which an offense be resolved. Any such recommended resolution must be in writing, signed by the manager of the licensed premises or license holder charged with the offense and approved by the Police Chief. The recommendation must include a statement detailing the facts determined in the police report and found as part of the Department's investigation. The recommended resolution is not binding upon the Town unless and until approved by the Board.

(7) Depending upon the nature of the violation, if the Police Department and the

manager of the licensed premises and/or license holder charged cannot agree on a recommended resolution, the Police Department will make any additional investigation it deems necessary for a complete presentation of the facts and will file a detailed written report with the Board.

(8) Notice is to be provided to a licensee of an alleged violation of the regulations. The notice will include the date of the event giving rise to the possible disciplinary action, a description of the event, and a clear identification of the provision(s) of the regulations that is/are alleged to have been violated as a result of the event. Said notice will also provide the licensee with the date upon which the Board will hold a hearing concerning the licensee's alleged violation. A notice containing the above-mentioned information shall be sent to the licensee via certified mail/return receipt requested no less than 10 days prior to the date of the hearing before the Board. Licensees are entitled to retain counsel to represent them at the hearing if they so desire.

(9) The procedures stated in the regulations shall be an indication of the range of sanctions available to the Board. The Board will refer to these guidelines in deciding whether to approve a negotiated recommended resolution.

(10) The Board may consider but is not required to accept a negotiated resolution recommended by the Nantucket Police Department. The Board is empowered to consider alternative sanctions consistent with § 207-16 of the regulations, and applicable state law.

(11) The Nantucket Police Department and the Board will maintain a public record of offenses and their dispositions that will be indexed according to the licensee/manager, server and purchaser involved.

(12) In the event that the Board decides to deny an application for a new license, refuse to issue a license or modify, suspend, revoke or cancel a license, the Board will provide the licensee with a written statement of reasons such action was taken against the licensee, a copy of which will be simultaneously mailed to the ABCC.

C. Determination of sanctions. Sanctions will be determined according to the following procedure:

(1) Offenses for which the Board may issue sanctions include, without limitation, those offenses as listed in Subsection D of this section.

(2) The Board may make adjustments according to the existence of factors that warrant an increase in the sanction described in Subsection E of this section ("aggravating circumstances") or a decrease in the sanction as described in Subsection F of this section ("mitigating circumstances").

(3) The Board may take into consideration the number of violations involved in the particular offense.

(4) The Board may take into consideration the alleged offender's acceptance of

responsibility as described in Subsection F.

(5) The Board shall also consider any relevant actions taken by the ABCC.

(6) The Board may take into consideration previous written warnings issued by the Town to the licensee. The Board may consider the date(s) of the written warning(s), the reasons therefor, and the similarity of the incident resulting in the warning with the incident at hand.

D. Common offenses.

(1) Sale outside of permitted hours (MGL c. 138, § 12);

(2) Purchase by person under age 21 (MGL c. 138, § 34A);

(3) Employment by licensee of person under age 18 for direct handling or selling of alcohol (MGL c. 138, § 34);

(4) Sale or delivery to a person under age 21 for own use or for use of another (MGL c. 138, § 34);

(5) Sale to an intoxicated person (MGL c. 138, § 69);

(6) Hindering or delaying an investigation by the ABCC or authorized agent of the Board (MGL c. 138, § 63A);

(7) Failure to post notice of penalty for driving under the influence and driving while drinking from open container of alcoholic beverage (MGL c. 138, § 34D); and

(8) Failure to comply with section 204 CMR 4.03 of the ABCC regulations, which, in pertinent part, provides as follows: No licensee or employee shall:

(a) Offer or deliver any free drinks to any person or group of persons;

(b) Deliver more than two drinks to one person at one time;

(c) Sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public;

(d) Sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;

(e) Sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;

(f) Sell, offer to sell or deliver malt beverages, wine or mixed drinks by the pitcher or in other community-type container commonly referred to as a "scorpion bowl" (Nothing in this subsection shall be construed to prohibit the sale of pitchers of beer.);

(g) Increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week; and

(h) Encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.

(9) Failure to comply with 204 CMR 9.00 of the ABCC regulations or Chapter 54, Alcoholic Beverages, Article III, of the Code of the Town of Nantucket pertaining to retail sale of malt beverages in kegs.

E. Aggravating circumstances.

(1) Failure to request identification card, operator's license or passport;

(2) Juvenile appearance of underage purchaser;

(3) Use of altered identification;

(4) Refusal to cooperate in investigation;

(5) Multiple sales to an underage purchaser on same occasion;

(6) Quantity of beverage sold;

(7) Staff not suitably trained;

(8) Underage server;

(9) Violations of other laws such as: prostitution, solicitation, drugs, gambling, disorderly conduct, cigarette sales to minor;

(10) Concealing violation(s);

(11) Furnishing false information to investigator;

(12) Exceeding lawful capacity of licensed premises;

(13) Intimidating or coercing witnesses or attempting to do so;

(14) Offense occurring while under suspension or penalty;

(15) Sale occurring while license suspended; and

(16) Occurrence of any personal injuries or fatalities related to the underlying violation.

F. Mitigating circumstances.

(1) Reasonable reliance upon identification card, an apparently valid motor vehicle operator's license, United States passport, passport issued by a country recognized by the United States government or United States issued military

identification card for proof of identity or age. (MGL c. 138, § 34B);

(2) Acceptance of responsibility by the licensee as shown by:

(a) Substantial and voluntary assistance offered in investigation;

(b) Acknowledgment of responsibility;

(c) Agreement to participate in additional training; and/or

(d) Agreement to participate in a program to detect and prevent future offenses.

G. Imposition of sanctions.

(1) The Board's imposition of sanctions will be consistent with the regulations and any applicable state statutory provisions. Note that these are guidelines only. Those persons who violate said regulations or state statutes may expect one or more of the following consequences as appropriate in the sole discretion of the Board:

(a) Suspension of license for a stated number of days. Licensees are advised that the following chart only represents guidelines for use by the Board when making its final decision in response to a liquor license violation. The Board, in accordance with the aggravating or mitigating factors as presented above, shall retain the authority to deviate from these guidelines in such cases as it deems appropriate.

Violation	Sanction
First violation	Written warning
Second violation	1-day to 2-day suspension
Third violation	3-day to 4-day suspension
Fourth violation	5-day to 6-day suspension, regardless of amount of penalty suspended, if any
Fifth violation	7-day to 15-day suspension
Sixth violation	16-day to 30-day suspension
Seventh violation	31-day to 1-year suspension, or revocation; or revocation of license and prohibition on reapplying for a 1-year period

(b) Suspension of license for a stated number of days with a portion of the suspension deferred upon condition that no further offenses occur within a specified period of time and that licensee waives its right to hearing upon such further offense.

(c) Revocation of liquor license or suspension for a specified period of time after a hearing for cause.

(d) Mandatory participation in prevention program(s) by licensee/manager and server as appropriate.

(e) Public notice of the offense and disposition.

(2) While the Board will endeavor to impose sanctions upon licensees in a manner consistent with the regulations, where exigent or special circumstances warrant, such as a violation of the regulations resulting in serious personal injury or death, the Board retains the authority in such circumstances to immediately order a full hearing, provide the licensee an opportunity to present evidence, and to revoke a license where the evidence so warrants such an action by the Board.

H. Reporting of violations and penalties imposed.

(1) The Board shall receive annual reports from the Nantucket Police Department detailing violations of the regulations for the reporting period, and the sanctions imposed by the Board for said violations. Reports shall be submitted to the Board no later than November 1 of each year. The Board will use these reports to analyze the factors that are commonly associated with violations, such as over-serving, underage serving, absence of serving training or registration, etc.

(2) As previously stated, the Board reserves that right to amend the regulations as it deems necessary. It is the responsibility of the licensee to keep abreast of any changes to the regulations that may affect its establishment.

Town of Nantucket
Police Department

William J. Pittman
Chief of Police

Charles Gibson
Deputy Chief of Police

4 Fairgrounds Road
Nantucket, Massachusetts
02554-2804

Telephone (508) 228-1212
Facsimile (508) 228-7246
www.nantucket-ma.gov/police

DELIVERED VIA ELECTRONIC MAIL

November 1, 2023

Mingo Corporation.; dba The Muse
Manager: Michael O'Reilly

Re: Alcoholic Beverages License #00053-RS-0762
Notice of Hearing

Dear Mr. O'Reilly:

On November 13, 2023, at 11:00 a.m., the Nantucket Select Board will hold a hearing pursuant to M.G.L. c.138, §23, and a Violation of Board of Selectmen Rules and Regulations Governing Alcoholic Beverages Chapter 250 to discuss your alcoholic beverages license #00053-RS-0762 for the business located at 44 Surfside Road. The hearing will be held via Zoom Webinar. The hearing will concern the incidents set forth in multiple police reports to include July 27 and 29, 2023, copies of which you will find attached. Additional report detailing all Calls for Service to the Muse for 2022 and 2023 will be included.

You may attend this hearing and be represented by counsel at your own expense if you wish. A participant link will be sent to your attention prior to the meeting. These allegations, if proven, may constitute violations of Massachusetts General Laws Chapter 138, §34 and/or the Select Board Rules and Regulations Governing Alcoholic Beverages, in that it is alleged the licensee allowed sale or delivery to a person under age 21 in violation of the above mentioned MGL Chapter 138, §34. In addition, the following Aggravating Circumstances as outlines in the Select Board Rules and Regulations: Staff not suitably trained; Violations of other laws such as disorderly conduct; The occurrence of any personal injury related to underlying violation.

These allegations, if proven, would constitute grounds for disciplinary action, including warning, suspension, or revocation. If you have any questions, please contact this office.

Amy C. Baxter
Licensing Administrator

Nantucket Police Department

Incident Report

Incident Report Number: 23-005831	Between: Date - Time	And/At: Date-Time 7/12/23	13:04

Incident:
GPR GENERAL POLICE REPORT

CFS Code-2:	CFS Code-3:

CFS Code-4:	CFS Code-5:	CFS Code-6	CFS Code-7	CFS Code-8

Incident Location:
44 Surfside Rd, Nantucket, MA, 02554

Address: *(Address, City, State, Zip)*	Home Phone Number
Employer	Work Phone Number
Employer Address	Cell Phone Number

NAMES

	Vehicle Information: (*Year, Make, Model, Style, Color*)			
Plate Number:	State:	Expiration Year:	Vin:	Insurance Company:
Other Vehicle Information:				NCIC#

Reporting Officer(s): Gale, Suzanne	ID Number: 217	ID Number:	Report Date: 07/12/2023

Time Received: 13:04:18	Time Cleared: 13:18:09	Unit(s) Assigned: 18	1 Of 3

Reviewed by: Mack, Daniel	ID Number 194	Copy To

Date: 07/12/2023

CFS Code-1: GPR GENERAL POLICE REPORT

Incident Report Number: 23-005831

23-005831 44 Surfside Rd, Nantucket, MA, 02554 07/12/2023

==

Gale, Suzanne 217

NARRATIVE

On 7/12/2023, at 1:00pm, came into the station wanting to speak to officer about a video he received from a friend. stated that this friend wants to stay anonymous and told me that this video was filmed on Sunday, July 9th at the Muse in the front lot, unknown what time.

states the Muse bouncers are using excessive force on people and it needs to stop. stated he was not there when the incident was being videoed and he does not know any of the parties that were involved in the fight with the bouncers. . He also stated that the video is also on Facebook now. Lt. Mack has a copy of the video and will attach it to the case.

The video shows several Muse bouncers fighting with several different Muse patrons in the entrance area of Muse. The video is not stamped with a date or time when it occurred that I could see. It appears that all parties involved got up and left the Muse area. The Nantucket Police nor Nantucket Fire were notified about the incident that occurred or if anyone was seriously injured.

did come back into the station at a later time to give a name and phone number of one of the parties that he believes was involved in the fight at the Muse. , with a phone number I am unable to find a local address of this person but did leave a message to contact the Police Department.

I did speak to the Muse Manger, about the incident that occurred on Sunday, July 9th. stated he was not working that night. He stated he will review the camera footage and make copies of the incident to give to the police department. He also stated he would provide a list of the employees working that night as well as anyone else he can identify in the videos. stated he would bring that in on Thursday sometime. At this time the case is under investigation of the detectives.

Nantucket Police Department **Supplementary Report**

Incident Report Number: 23-005831	Incident Location: 44 Surfside Rd, Nantucket, MA, 02554	Incident Date: 07/12/2023

New Incident:	Original Offense - 1: 265/15A/A	New Offense - 1:	New Offense - 2:

NAMES

Reporting Officer(s): Mansfield, Keith	Payroll Number: 286	Payroll Number:	Report Date: 07/14/2023
Reviewed by: Mack, Daniel	Payroll Number: 194	Copy To:	Page: 1 Of 8

23-005831 44 Surfside Rd, Nantucket, MA, 02554 07/12/2023

==

Mansfield, Keith 286

NARRATIVE

On 07/13/23 I, Detective Mansfield, along with Officer Mastriano was assigned to conduct a follow up investigation regarding an incident that occurred at the Muse Nightclub on or about the early morning hours of July 9th, 2023. The incident stems from a social media post involving a fight with several individuals along with members of the Muse Security Staff. Reference attached video along with Officer Mastriano's incident report.

The attached video is 1:41 (one minute forty-one seconds) in length. The video shows four security staff out front of the Muse involved in an altercation with three (3) men. Through my investigation I was able to identify the security staff working and seen in the video [redacted] (*center screen black security shirt*), [redacted] (*black security shirt, enters at 14 seconds*), [redacted] (*straddling over* [redacted]), and [redacted] (*kneeling on ground)*. The other involved male parties are [redacted] (*on ground*), [redacted] (*plaid shirt*), and [redacted] (*white shirt, ripped off)*. See attached interview for individual accounts of what occurred.

On 07/14/23 at approximately 0910 hrs myself, along with Officer Mastriano conducted an interview of [redacted] . [redacted] one of the security staff from the Muse Nightclub seen on the video attached to the case. [redacted] can be located on the video [redacted] the cement barricades.

[redacted] arrived at the police station and is escorted into interview room #111. He is advised that everything is being audio and video recorded using a body camera worn by Officer Mastriano. The interview begins by reading [redacted] his Miranda rights off a Nantucket Police Department Notice and waiver of rights form. He is then provided a copy. [redacted] then signs the waiver and agrees to speak with Officer Mastriano and Myself.

[redacted] explains that he was working as a Security supervisor at the Muse during the night of the above-mentioned incident. [redacted] was positioned in the area of the pool tables and bathrooms, due to that location being a problem area. He was contacted by security staff regarding a fight that had occurred in the center of the dance floor. Staff quickly began to break up the fight. [redacted] states security staff determined the fight was between a group of Spanish patrons and a group of Georgian men. [redacted] stated security escorted a group of Spanish men out of the club to the rear parking lot area. [redacted] escorted the Georgian men out of the bar through the front entrance and to the front parking lot area. At this time recalls an unknown person strike him from behind. He describes initially being struck on the right side of his face and nose. He then fell to the ground. After the initial strike he states that he felt people holding onto him and grabbing at him. He also remembers punches coming at him from all directions. It was his belief that the individual who had struck him was one of the Georgian men, but he could not identify any specific person.

describes being positioned over one of the Georgian men. This man was later determined to , who was the initial reporting victim. n describes being struck several times and states he felt as if these attackers were going to kill him. Eventually he recalls seeing someone out of the corner of his sight of vision. This person was wearing a black shirt, who he knew was security staff. At this time, they were able to get the men to stop attacking him.

was asked if he could identify who was attacking him. He stated that he could not identify who the attacker was. was then asked if he was able to identify who had recorded the incident. Again, not able to identify who had recorded the video provided to the police.

then explained that everything happened so fast, and he did not have time to call the police like he should have. He was asked why the police were not called after the incident occurred. He stated that after the incident happened all of the involved parties immediately left the area. It was at this time they felt it not necessary for police involvement.

I asked if any weapons were used during fight. states he did not see any type of weapon. He elaborates by saying other security believed he saw an unidentified object in hand at one point. states he had a difficult time seeing much due to the fact that he was covering his face and head in order to protect himself from further attacks.

was asked if there would be any video cameras in the front of the Muse that would have captured the fight. stated that he believes the cameras in that area were not operational at the time.

was then asked to help identify other individuals in the video. Another male security guard was seen in the video. The male was wearing a hooded sweatshirt and not a Security shirt. was showed the video and asked if he knew who the male was. He was only able to identify the male as He stated was new and that he has not seen him since that night.

then stated he did sustain injuries during the fight. He described those injuries as being to Those injuries were photographed. It was later learned that missed one day of work due to his injuries.

After conducting the interview with Officer Mastriano and I conducted an exterior viewing of the area outside the Muse. While there we determined that the video was indeed taken from a location located in front of the Muse. The area was photographed. Those photographs have been attached to the case.

The manager of the Muse, Patrick Considine, was then spoken to regarding the incident. A request was made to him for any and all video footage that the Muse Nightclub would have of the specific incident in question. Considine was aware of the incident and stated he had seen the video circulating on social media. He explained that he would place a request to the owner of the Muse to get any surveillance footage. Several attempts were made to the owner, Michael O'Reilly, to gather surveillance footage. As of 07/21/23 no surveillance footage has been received by the police department.

On 07/19/23 at 1417 hrs. I, Detective Mansfield, along with Officer Mastriano conducted an interview with the Nantucket Police Department in interview #111. The interview was audio and video recorded on Officer Mastriano's body worn camera. was an involved party with the incident and fight that occurred at the Muse Nightclub on 07/09/23.

is escorted into interview #111 along with explains he is able to speak and understand English but uses to assist with translation to ensure his full and complete understanding. The interview begins by reading his Miranda rights which he understands and signs that he acknowledges.

explains that he is walking out the front door of the Muse. His friend is seen speaking with some female parties in the area of the benches. A fight begins between and an unidentified Spanish male. believes the fight is regarding speaking with females. reports seeing being struck first by an unknown male. then attempts to keep everyone separate except and the male he is fighting with. At this time the security staff push both and out further from the building. then states he was attacked by the security along with He states that all three were all being attacked at the same time by the security staff. then pointed out that one of the Security staff members did not have any part in the attack. This Security staff member was later identified

At this time advised us that a video was taken by of the beginning of the fight. The video is produced to me, and it has been attached to the case. The initial video is shown to both and During this time, they fully explain their understanding of the video. explain that all of their actions seen in the video are them defending themselves or attempting to stop the attack by Security.

I inquired as to any injuries that [redacted] I had from the fight. He did not report or appear to have any significant or visible injuries. We asked [redacted] if he could determine how and when his injuries [redacted] occurred. [redacted] explained that the injuries occurred when he was being kicked. Those kicks are seen on video being done by the Security [redacted] also explains that he did not throw any punches during the incident.

I was able to make contact with [redacted] is one of the security staff seen on the video. He is not wearing a security shirt. He is seen kneeling down next [redacted] during the incident. [redacted] agreed to speak with me. Shortly after I met [redacted] at his residence [redacted]. spoke outside in the driveway. The conversation was audio and video recorded on my body worn camera. I asked [redacted] if he knew what or who started the fight. He explained that he did not see the start of the fight but he knew that it began because of a woman. The fight was between [redacted] and an unidentified Spanish male. He explained that [redacted] attempted to keep everyone back and allow [redacted] and the Spanish male to continue their fight without anyone stepping in. This is when the security stepped in because they could not allow the fight to occur on their property. [redacted] states around this time [redacted] the security guard, was hit first. He could not identify who had hit him. He then states that he saw [redacted] strike [redacted] had also hit someone. [redacted] was then seen straddling over [redacted] going to strike [redacted] again. [redacted] explained that he stepped in and told [redacted] not to strike [redacted] anymore. [redacted] listened to the advice of [redacted] and did not strike [redacted] any further. [redacted] stated he knew [redacted] was drunk, and he was happy that [redacted] did not "finish" him by striking him again.

[redacted] states that the security staff then attempted to have [redacted] leave the property. Security began to push [redacted] in a direction away from the property. At one point [redacted] is pushed up against the building. It was at this time that two security staff struck [redacted] multiple times with their fists. Those staff were identified as [redacted] After this all involved parties, besides the security staff, left the area.

[redacted] was asked if he had seen any weapons during the fights. He told me that he did not. [redacted] was then shown the video and he pointed out what he had previously described. After viewing the video our conversation ended.

Interviews were also conducted with [redacted] ~~Those interviews have been documented by Officer Mastriano~~. See his report.

Based on the investigation conducted by myself and Officer Mastriano we determined that a fight occurred at the Muse Nightclub on 07/09/23. During that fight seen kicking both with his black shoe. is also seen punching . is seen punching is seen punching

Several attempts have been made to identify the original person who shot the video. Those attempts have been unsuccessful. Attempts have been made to the manager of the Muse and the owner of the Muse to gain any surveillance footage they would have that would give us a better understanding of how the fight originated. Those attempts have been unsuccessful. With the information provided to us and gathered from our Investigaton we have requested a probable cause hearing with Nantucket District Court to determine if probable cause exists to charge the following individuals:

Assault &Battery with a Dangerous Weapon *A&B WITH DANGEROUS WEAPON c265 §15A(b)* (Shod Foot) - 2 Counts
Assault &Battery *c265 §13A* Victim

Assault &Battery *c265 §13A* Victim:

Assault and Battery *c265 §13A* Victim:

Nantucket Police Department **Supplementary Report**

Incident Report Number: 23-005831	Incident Location: 44 Surfside Rd, Nantucket, MA, 02554	Incident Date: 07/12/2023

New Incident: A&B WITH DANGEROUS WEAPON c265 §15	Original Offense - 1: 265/15A/A	New Offense - 1: 265/15A/A	New Offense - 2:

NAMES

Suspect-1

Booking#: 23-000242

Case#	Charge	Description	Ct
23-005831	265/13A/B	ASSAULT & BATTERY c265 §13A(b)	1
23-005831	265/15A/A	A&B WITH DANGEROUS WEAPON c265 §15A(b)	2

Suspect-2

Involved Party

Victim-1

Reporting Officer(s): Mastriano, Michael J.	Payroll Number: 629	Payroll Number:	Report Date: 07/17/2023
Reviewed by: Mack, Daniel	Payroll Number: 194	Copy To:	Page: 1 Of 5

Victim-2

==

NARRATIVE

On Thursday July 13, 2023 I, Officer Mastriano, was on patrol in Victor 15. At approximately 9:30am I was contacted by Detective Lieutenant Mack regarding case #23-5831. The case involved a video taken by a witness of a fight that occurred at the Muse late Saturday night into Sunday morning, 7/8-7/9. See Officer Gale's report for more information on the initial reporting of the incident.

Lieutenant Mack assigned me to assist with the follow-up investigation of the case. Specifically, assisting with identifying and interviewing the involved parties. After briefing me on the information gathered so far, Lieutenant Mack showed me the video of the fight. While reviewing the video I observed the following.

The video begins with a male patron, later identified on the ground with multiple people piled on top of him. As the video begins, a security member, later identified , walks over and kicks the individual on the ground in the head and neck area four separate times. It appears as though was wearing black sneaker style shoes at the time. While this is happening, another member of the security team, later identified as , is on top of on the ground with his knees straddling torso area. A man in a button-down, plaid shirt, later identified as , was attempting to pull off while a third member of security, later identified as , was trying to pull him back. After seeing kick grabs from behind and pulls him away before falling to the ground. After fell to the ground, proceeded to kick in the chest. After being kicked, gets up and throws a punch at but misses.

While was delivering the kick to chest, delivered a hammer fist style punch to . In response to punch, a man wearing a white T-shirt, later identified as , punches twice in the head. At that time, a fourth member of security, later identified enters the video and goes after After exchanging punches, the two men separate and retreats. When retreats, turn their attention to who begins backing away. They back up against the exterior wall of the Muse and both punch multiple times. then walks away and exchanges punches with creates space, and is able to leave the area. After leaves the view of the video, you see on the ground with standing over him restraining his left arm, and kneeling by legs.

After reviewing the video, Detective Mansfield arrived at the station to assist. With the assistance of Dispatcher Considine, who is also a manager at the Muse, Lieutenant Mack was able to identify three of the security members . Before reaching out to the security staff, Lieutenant Mack reached out to the original reporting party, ,who brought the video to our attention and asked him to come in to speak with us. While waiting for to arrive at the station, arrived at the station to speak to an officer. At approximately 11:47am, Detective Mansfield and I interviewed in interview room 111. While escorting into the interview room I observed scratches and cuts arms, consistent with being on the ground during a fight. After entering the room and sitting down, appeared as though At this time, Detective Mansfield asked if he was involved in in the incident that we have the video of, and he said he was. We asked what happened that night and he informed us of the following.

stated that the incident happened around 11:00pm. stated that he went to the Muse with some buddies and some girls he knows. admitted that they may have drank a little too much that night. was not with his friends during the initial interaction but stated that the situation began inside when a "Spanish guy" started pushing back and forth with the Spanish guy, causing the Spanish guy to drop his drink. A fight ensued and the Muse security staff kicked the group out. stated that he exited the Muse and began asking his friends what had happened to get them kicked out. While trying to figure out what was going on stated that the Muse staff told him he was being kicked out as well and he needed to pay his tab before leaving. went in to pay his tab and then returned outside where he found the involved Spanish guy, who knows from hanging out at the Muse. spoke briefly with the Spanish guy. apologized to the Spanish guy for his friend's behavior. then called over to shake hands and apologize to the Spanish guy. stated that he turned away to speak with someone else and started fighting with the Spanish guy again. proceeded to position himself in between the two men fighting and the crowd to prevent anyone from joining in on fight. stated that the security came and pushed him out of the way to break up the fight, but as they pushed him away a crowd gathered around the two men fighting and he could not see what was happening. stated that he was trying to get back to but that the security stopped him and prevented him from helping. stated that the staff wanted to fight him and kick him but that he just wanted them to leave him alone so he could get and leave. stated that he doesn't know what happened but that two members of security took him down to the ground, got on top of him and began beating him.

At that time assisted with identifying some of the unknown involved parties in the video. confirmed that he was the person on the video that was on top of getting kicked and punched. also stated that was the member of security who stayed out of the fight for the most part that went out with that night. stated that was trying to make the staff aware that he knew and to leave him alone. identified the man in the plaid shirt as his friend , who had the initial fight with the Spanish guy. Finally, identified the man in the white t-shirt as his friend . I asked who recorded the video and he was unsure but told me he received it from a Spanish friend and could find out.

Detective Mansfield asked if he would like to pursue charges, which stated that he did. Detective Mansfield then photographed injuries, stated that he is having difficulty because of the injury sustained during the incident. stated that he would be going to and the hospital for his injuries and would provide us with any information he received from them. also stated that he would contact and have them contact us about the incident.

After speaking with Detective Mansfield reached out to agreed to come to the station to speak with us. At approximately 1:08pm, came to the station and spoke with us in interview room 111. After having his Miranda Rights read to him by Detective Mansfield and signing the Waiver of Rights, spoke with us about the incident.

stated that he was working security at the Muse Saturday night into Sunday morning and believed the incident happened after 1:00am. was one of two senior security staff working that night. The other senior staff member was stated that he was patrolling the inside of the club when he saw a fight going on. stated that he grabbed another staff member and kicked the group outside. Knowing that the fight would likely continue outside, grabbed and went outside. When they made it outside the two men, and the Spanish guy, were fighting again. stated that security broke up the fight again and began escorting the two groups off the property in separate directions. stated that he was escorting the Spanish group through the parking lot towards Backus Lane when he heard somebody yelling, "Don't kill the security, don't kill the security". When he came around the corner, he saw on the ground with four or five guys on top of him. saw the man under and stated that he saw an object in his hand. stated that he did not know what it was and he did not want to bend down because of the other men there, so he tried to kick the object out of hand. stated that while he was trying to kick the object from hand, someone grabbed him from behind. stated that he was able to shake him off, and that was the end of it. stated that it happened so fast that he could not call the other security members or police. It should be noted that in the video you can see first kick land in the area of head and neck and not near his hand. The second kick strike's e in the side of the head. The third kick was a downward stomp on what appears to be head. During this stomp, you can see arm extended straight up from the ground and has a hold of . It was clear that there was no attempt to kick hand. The fourth attempt was a straight kick but is unclear exactly where was struck.

At that time, I asked if he saw what started the fight between and the group of men and he stated that he did not see the start of the fight. I asked if he knew who was yelling not to kill security and he stated that he didn't know who he was but that it was the man standing on the cement barriers near the fight. I asked what happened after he brushed off his back and he stated that e fell to the ground and he used his foot on him at that time. I asked what happened after got back up and he said that heard the fighting while he was throwing out trash in the back of the building and ran out front to help. stated that stood there with his hands crossed and didn't do anything. I asked if they ever recovered an object that he believed was in hand and he said that he did not. described it as some sort of object and he was not sure if it was a knife. Detective Mansfield asked what would make him think it was a knife, and he showed us that it was because of the way he was holding it. further explained that he could not see the handle but that he saw something shiny extending from his hand and estimated that it was approximately three inches. (see bodycam footage for accurate account hand gestures and description of object)

Detective Mansfield and I asked about any surveillance cameras in the area and he did not believe they were working. I asked if he has seen any different videos of the incident other than the one being circulated, and he said that he has not. stated that he saw the person taking the video and that it was a Spanish woman with a male standing on the stepped down porch near the entrance of the Muse. did not know who these people were. At that time, I advised to reach out to us if he becomes aware of any other names and/or potential witnesses of the incident.

On July 14, 2023, Detective Mansfield and I spoke with in interview room 111. See Detective Mansfield's supplemental report for more information on that interview. At the time of this report, we are still waiting to speak with multiple involved parties as well as the original reporting party.

Nantucket Police Department

Supplementary Report

Incident Report Number: 23-005831

Incident Location: 44 Surfside Rd, Nantucket, MA, 02554

Incident Date: 07/12/2023

New Incident:

Original Offense - 1: 265/15A/A

New Offense - 1:

New Offense - 2:

NAMES

Reporting Officer(s): Mastriano, Michael J.

Payroll Number: 629

Payroll Number:

Report Date: 07/21/2023

Reviewed by: Mack, Daniel

Payroll Number: 194

Copy To:

Page: 1 Of 2

NARRATIVE

On Monday July 17, 2023 I, Officer Mastriano, was on patrol in Victor 15. At approximately 12:46pm came to the Nantucket Police Department to speak with me about his part in the incident.

Upon arrival I escorted into interview room 111. was advised of his Miranda Rights and signed a Miranda Waiver, agreeing to speak with me. During the interview informed me of the following.

stated that around 1:00am the Muse closed and he began taking out the trash. heard loud noise coming from the front of the Muse. Because he is security, t went to the front of the Muse through the parking lot to investigate. When he got to the front, saw four people on . One guy stood up, so yelled, "Hey, what's going on?" and the guy punched him. said he was knocked to the ground and got back up and punched the man back. stated that he did not know what started the fight, but that was his involvement.

At that time, I showed the portion of the video where backed up against the building and punched him multiple times. stated that he was yelling at him to leave and that his intention was to make him leave.

Before ending the interview I asked to listen for any talk at work regarding who had recorded the video so we can get the entire video if possible. stated that he would contact me if her hears anything.

Nantucket Police Department

Incident Report

Incident Report Number: 23-006603

Between: Date - Time

And/At: Date-Time 7/27/23 23:27

Incident: 272/53 DISORDERLY CONDUCT c272 §53

CFS Code-2: COMLAW POLICE OFFICER, INTERFERE WITH (

CFS Code-3:

CFS Code-4:

CFS Code-5:

CFS Code-6

CFS Code-7

CFS Code-8

Incident Location: 44 Surfside Rd, Nantucket, MA, 02554

Name *(Last, First, Middle)*

DOB:

Race/Sex

Address: *(Address, City, State, Zip)*

Home Phone Number

Employer

Work Phone Number

Employer Address

Cell Phone Number

Name *(Last, First, Middle)*

DOB:

Race/Sex

Address: *(Address, City, State, Zip)*

Home Phone Number

Employer

Work Phone Number

Employer Address

Cell Phone Number

NAMES

Booking#: 23-000254

Case#	**Charge**	**Description**	**Ct**
23-006603	272/53/F	DISORDERLY CONDUCT c272 §53	1

Vehicle Information: (*Year, Make, Model, Style, Color*)

Plate Number:

State:

Expiration Year:

Vin:

Insurance Company:

Other Vehicle Information:

NCIC#

Reporting Officer(s): Moran, Jack W.

ID Number: 1010

ID Number:

Report Date: 07/28/2023

Time Received: 23:27:26

Time Cleared: 23:58:07

Unit(s) Assigned: 7, 6, 15, 352

1 Of 5

Reviewed by: Mauldin, Janine M.

ID Number 474

Copy To

Date: 07/28/2023

CFS Code-1: 272/ DISORDERLY CONDUCT c272 §53

Incident Report Number: 23-006603

23-006603	COMLAW4	POLICE OFFICER, INTERFERE WITH (Common Law)	1

NARRATIVE

On Thursday, July 27th, 2023, I, Officer Moran, was on patrol in marked cruiser Victor 6. At approximately 11:27 pm, I received a dispatch to respond to 44 Surfside Rd. *(The Muse)* for the report of abundant underage drinking, to include kids as young as 15 years old inside. Upon receipt of said dispatch, I made my way to the above noted location. A short time later, I arrived on scene.

Upon my arrival, I was met by Officer Colasurdo and Massachusetts State Police *(MSP)* Trooper O'Toole whom had arrived just prior to myself. Initially, officers as well as Trooper O'Toole conducted a walk-through of *"The Muse"* to ensure no underage individuals had made entry into the bar. Upon our entry, groups of people vacated the dwelling and left the property entirely. After confirming multiple identifications inside, we made our way back outside to continue our investigation.

At this time, I observed two female parties, later identified as a (DOB: /04) and a (DOB: /05), sitting on a concrete barrier outside with multiple open containers beside them. Additionally, I observed with a *"High Noon"* Vodka Seltzer in her hand. I believed both females to be under the legal drinking age of 21 years old. I then approached and requested them to produce an identification due to the open containers beside them, as well as the one was holding. At this time, Sergeant Mauldin arrived on scene to assist.

While conducting my investigation and attempting to identify the two female parties, a third unrelated female came over and inserted herself into the investigation, later identified as a (DOB: /04). originally observed officers carrying out our duties from a picnic table roughly fifty *(50)* feet away and began questioning us on our lawful authority. While Officer Colasurdo and I attempted to continue identifying the two suspected underage females, walked over and began advising *"to leave"*. Immediately, I observed to be unsteady on her feet, slurring her words, and in a state of heavy intoxication. Officer Colasurdo at this time advised to stop, and to go back and sit down at the picnic table. Officer Colasurdo also spoke with and confirmed that she had no relation to the two females, did not know them, and that she needed to leave the area.

While again attempting to continue our initial investigation, again kept advising the two females directly in front of Officer Colasurdo that they needed to *"Get up and leave, you don't need to* *tell them anything"*, referring to our efforts to identify . At this time, Officer Colasurdo again advised to *"Stop getting in the way"* and to leave the scene of our investigation. At this time my attention was directly fully toward due to her actions and statements. I then asked who she was approximately three *(3)* times, to which I received no reply from her. then again continued to feed directives to not speak to officers, and at this time I followed by advising if she does not stop interjecting herself into our investigation she will be going to jail for Interfering with a Police Officer. Again, was told to leave.

At this time, began questioning officers *"rights"* to demand identification from the underage females. I explained to that the State of Massachusetts has granted me the authority to conduct the lawful investigation that we were currently conducting. She then replied by stating, *"go, go, go, talk some shit"* and sat back down at the picnic table from which she originated. Sergeant Mauldin also advised by stating, *"one more time and you'll be going with us"*, referring to her arrest if she were to continue the outburst's disrupting officers. while seated at the table followed by stating, *"what's the issue"*.

Officers then again attempted to gather the necessary information to identify which at this time we still had been unsuccessful in completing. As we continued, again yelled across to the two females exclaiming, *"Don't tell them!"*. At this time, was advised she was being placed under arrest for Interfering with a Police Officer. Prior to the arrest, had been advised five *(5)* times to leave, and stop interfering with our investigation. Officer Colasurdo then placed into handcuffs *(Double-Locked)*, and we escorted her to the rear compartment of Victor 6. She was pat-frisked for weapons, and searched for any contraband not permitted into entering the Nantucket Police Department *(NPD)* booking area. I then ensured no foreign objects or debris were in the rear compartment of Victor 6, which none were discovered. She was then properly secured into Victor 6 for transport to NPD.
continuously and persistently interrupted officers verbally from carrying out our lawful duties. Additionally, actions and statements toward officers created a public inconvenience, annoyance, and alarm through her agitated behavior for the female parties whom we were originally engaged with. continued to disregard officer's lawful orders to vacate the scene, and subsequently was placed under arrest.

was then transported back to NPD, where she was properly booked, fingerprinted, and photographed. All of belongings were properly inventoried and secured into a locker for safekeeping. After answering negative to all Q5 Questions, was afforded a phone call which she accepted. was then placed into Female Cell #F2 pending bail.

All above events were captured on Body-Worn Camera.

Due to the above stated facts and circumstances, has been arrested and charged with the following:

Common Law Crime - Interfering with a Police Officer
M.G.L. c.272 s.53 - Disorderly Conduct.

Nantucket Police Department

Incident Report

Incident Report Number: 23-006604	Between: Date - Time		And/At: Date-Time 7/27/23	23:31

Incident:
GPR GENERAL POLICE REPORT

CFS Code-2:

CFS Code-3:

CFS Code-4:

CFS Code-5:

CFS Code-6

CFS Code-7

CFS Code-8

Incident Location:
44 Surfside Rd, Nantucket, MA, 02554

Name **(Last, First, Middle)**

DOB:

Race/Sex

Address: **(Address, City, State, Zip)**

Home Phone Number

Employer

Work Phone Number

Employer Address

Cell Phone Number

Name **(Last, First, Middle)**

DOB:

Race/Sex

Address: **(Address, City, State, Zip)**

Home Phone Number

Employer

Work Phone Number

Employer Address

Cell Phone Number

NARRATIVE

On Thursday, July 27th, 2023, I, Officer Moran, was on patrol in marked cruiser Victor 6. At approximately 11:27 pm, I received a dispatch to respond to 44 Surfside Rd. *(The Muse)* for the report of abundant underage drinking, to include kids as young as 15 years old inside. Upon receipt of said dispatch, I made my way to the above noted location. A short time later, I arrived on scene.

I was met by Officer Colasurdo and Massachusetts State Police *(MSP)* Trooper O'Toole who had arrived just prior to myself. As we approached the front entryway to the bar area, I observed approximately 15-20 individuals, both male and female, immediately vacate the area and no longer were attempting to gain entry. I observed every one of these individuals to be what I believe was under the legal drinking age of 21 Years Old. I attempted to ask each individual if they were 21 or older as they passed me, which none responded and kept walking away. I advised the group that they should continue to leave if they are not of the proper drinking age.

Vehicle Information: (***Year, Make, Model, Style, Color***)

Plate Number:

State:

Expiration Year:

Vin:

Insurance Company:

Other Vehicle Information:

NCIC#

Reporting Officer(s): Moran, Jack W.	ID Number: 1010	ID Number:	Report Date: 08/01/2023

Time Received: 23:31:25	Time Cleared: 23:35:07	Unit(s) Assigned: 15	1 Of 2

Reviewed by: Mauldin, Janine M.	ID Number 474	Copy To

Date: 08/01/2023

CFS Code-1: GPR GENERAL POLICE REPORT

Incident Report Number: 23-006604

23-006604 44 Surfside Rd, Nantucket, MA, 02554 07/27/2023

Officers and MSP Trooper O'Toole then made entry into the bar area in an attempt to observe any additional underage parties that had successfully made their way into the establishment. Upon entry we observed numerous individuals that we did not believe to be of the legal drinking age, with alcoholic beverages in hand conversing around the bar area. We approached some of these individuals, while others again immediately vacated the property entirely upon observing us enter. Of those we identified, we concluded that they were either in possession of fake identifications or a valid identification that did not belong to them. Every person encountered left the property after our conversation. After identifying whoever we believed to be underage, we made our way back outside to speak with security personnel. MSP Trooper O'Toole advised the staff that the scanner they had employed to check identifications was unreliable, and that people were also using identifications that did not belong to them at all. He advised them they needed to properly check identifications, for they didn't even relatively match their holder.

While outside, we encountered further underage individuals who had alcoholic beverages in-hand. Others were heavily intoxicated and confirmed to also be underage upon our identification of them. Please refer to Case #23-006603 for further information regarding an arrest that followed, as well as additional underage drinking at *"The Muse"*. Units would eventually clear the scene and return to patrol.

Nothing further at this time.

Moran, Jack W.	1010		

LICENSE #: 00053-RS-0762 **LICENSE FEE: $3,250.00**

THE LICENSING BOARD *for the* TOWN OF NANTUCKET, MASSACHUSETTS

HEREBY GRANTS AN

ANNUAL RETAIL RESTAURANT LICENSE

TO EXPOSE, KEEP FOR SALE, AND TO SELL

ALL ALCOHOLIC BEVERAGES

TO BE CONSUMED ON THE PREMISES

BUSINESS: **Mingo Corporation**
DBA: **The Muse**
PREMISES: **44 Surfside Road**
Nantucket, MA 02554
MANAGER: **Michael O'Reilly**

ON PREMISES DESCRIBED AS:
First floor: kitchen, dining room, bar and dance floor; 2nd floor storage.

NO ALCOHOL SERVICE ON REAR DECK. SMOKING ONLY.

TOTAL OCCUPANCY: 372

The hours during which alcoholic beverages may be sold: In accordance with MGL Chapter 138 and amendments thereto with the local provision that patrons shall not be served alcoholic beverages before 8:00AM Monday through Saturday and 11:00AM on Sunday. **No alcohol service is permitted after 1:00AM** and patrons must be off the license premises and said **premises must be closed by 1:30AM**. Any restrictions apply as are on file with the local licensing authority. In accordance with Article 40 ATM 2001, Chapter 86.1 Board of Health Regulations Prohibit Smoking in Certain Places within the Town of Nantucket.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the Massachusetts General Laws, as amended and any rules or regulations made thereunder by the licensing authorities, including, but not limited to Chapter 250 of the Town of Nantucket Rules and Regulations Governing Alcoholic Beverages.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature

Chair, Select Board

THIS LICENSE WILL EXPIRE DECEMBER 31, 202x

**Unless earlier suspended, cancelled, or revoked*

This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

LICENSE FEE: $100.00

THE LICENSING BOARD *for the* TOWN OF NANTUCKET, MASSACHUSETTS

HEREBY GRANTS AN

ENTERTAINMENT LICENSE

► SEVEN DAYS ◄

BUSINESS: **Mingo Corporation**
DBA: **The Muse**
PREMISES: **44 Surfside Road**
Nantucket, MA 02554
MANAGER: **Michael O'Reilly**

LICENSED PREMISES DESCRIBED AS:
First floor: kitchen, dining room, bar and dance floor; 2nd floor storage.

REAR DECK FOR SMOKING ONLY.

TOTAL OCCUPANCY: 372

Approved Entertainment:

- **INSTRUMENTAL MUSIC**
- **VOCAL MUSIC/LIVE BANDS**
- **DANCING**
- **JUKE BOX**
- **STREAMING MUSIC/TELEVISION**
- **AMPLIFIERS**
- **11 AUTOMATIC AMUSEMENT DEVICES, INCLUDING POOL TABLES**

Conditions of License:

HOURS: 1:00 pm to 1:00 am; 7 Days

All Entertainment must end by 1:00 am.

No Alcohol Service or Entertainment on Deck.

(2) Designated Crowd Managers.

(See below for regulations)

Crowd Manager: In Accordance with 527 CMR 10.13 under the Board of Fire Prevention Regulations, every nightclub, dance hall, discothèque or bar, with an occupant load of 100 persons or more shall "designate one crowd manager for every 250 occupants or portion thereof based upon the Certificate of Inspection issued" under the State Building Code.

Crowd Manager Requirements: Must be present in the facility during all hours that it is open to the public.
Must be trained and tested every three years.
Must maintain a current Certificate of Completion on-site for all training.
Must complete Fire and Building Safety Checklist every day building is open to the public.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of Section 183A, Chapter 140 of the Massachusetts General Laws, and any rules or regulations made thereunder by the licensing authorities.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature

Chair, Select Board

THIS LICENSE WILL EXPIRE DECEMBER 31, 202x

**Unless earlier suspended, cancelled, or revoked*

This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

THE MUSE

NANTUCKET

SECURITY PROTOCALS AND PROCEDURES

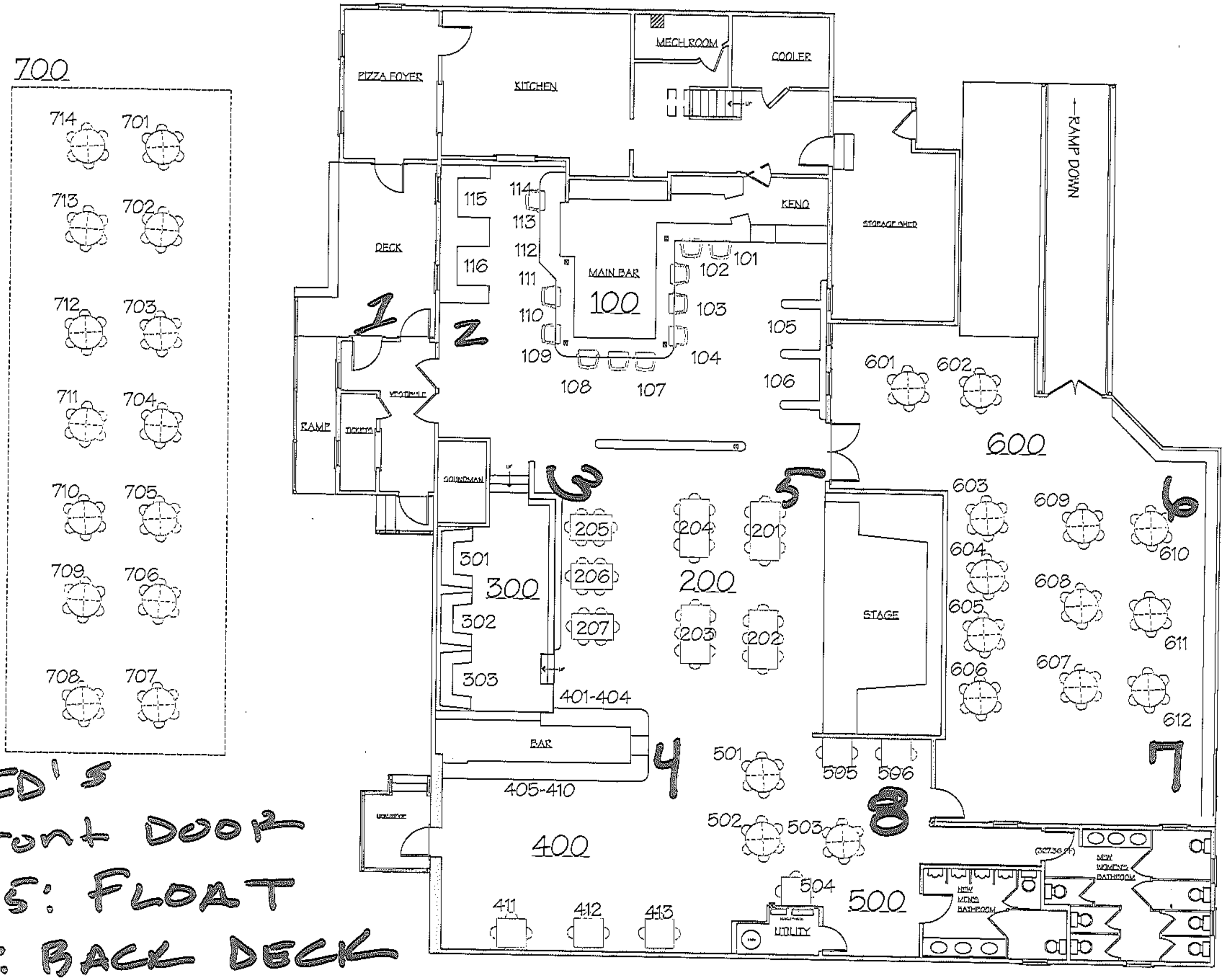
44 SURFSIDE RD.

NANTUCKET, MA

508-228-1471

Protocol and Procedure Outline

1. Introduction
2. Commonwealth of Mass
3. Appearance & dress code
4. "Sizing up" the bouncers
5. Responsibilities of a Bouncer
6. Bouncer skills/suggestions
7. Refusing entry/no trespass
8. Problems arising at the door
9. Properly checking ID'S
10. Written Test



1: ID's

2: Front Door

3/4/5: Float

6/7: Back Deck

8: Bathroom / Pool area

Security Staff,

The following binder is a combination of multiple suggestions, ideas, scenarios, risk assessments and de-escalation tactics that will help you put these ideas into practice and develop a low-key, nice, yet firm disposition. The intention to provide a valuable overview of the Club Security/Professional Bouncer and Doorman/woman Industry. Various sources/authors have compiled some pages that explain different suggestions from previous club security staff, correctional, law enforcement and conflict de-escalation training and seminars. At the end of this binder, there is a small quiz to take to test your memory on the knowledge you just have received. By no means is this a state certified binder or a test that will now certify you as a professional bouncer in the state of Massachusetts. We are just trying to pass along some helpful information as we come up on this busy summer.

In addition to completing this binder and quiz, it is imperative that each security staff member review the book provided by the Alcoholic Beverage Control Commission ("ABCC") for acceptable forms of ID to purchase liquor. Each bouncer **MUST** know the proper forms of ID's we accept.

Thank you,

Management

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-present)

An Act relative to third party training and background checks for violent history for security staff at bars and clubs.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Background Checks.

No person may perform the duties of security staff (bouncers, doormen, floor staff, or other persons performing duties related to admission of patrons and/or maintaining order and safety) at bars, clubs, pubs, taverns, or any other establishment serving alcoholic beverages pursuant to a license authorized by section 12 of chapter 138 of the general laws of Massachusetts unless the proprietor, owner, or manager of the establishment has performed a CORI check pursuant to chapter 6 of the general laws of Massachusetts and chapter 803 of the Code of Massachusetts Regulations, that person has been found qualified to perform the required duties, and that such determination of qualification has been memorialized in writing by the proprietor, owner, or manager. The background check should focus on violent criminal history or other incidents that are strictly related to the duties of the position.

Section 2.Third-Party Training.

No person may perform the duties of security staff (bouncers, doormen, floor staff, or other persons performing duties related to admission of patrons and/or maintaining order and safety) at bars, clubs, pubs, taverns, or any other establishment serving alcoholic beverages pursuant to a license authorized by section 12 of chapter 138 of the general laws of Massachusetts unless (i) the person has satisfactorily completed a program of third-party training to identify a problem patron exhibiting behavior including, but not limited to, aggressive behavior, underage consumption of alcoholic beverages, presentation of false/fake identification, (ii) the person has satisfactorily completed a program of third-party training to employ best practices regarding safe removal of the aforesaid problem patron from the premises without physically harming the problem patron, another patron, or any staff member, (iii) the person has received a certificate indicating satisfactory completion of the training from the third-party trainer, and (iv) the proprietor, owner, or manager of the establishment has verified such completion and memorialized such verification in writing.

Section 3.Regulatory Authority.

The Executive Office of Public Safety shall have the authority to promulgate rules and regulations necessary to implement and enforce these sections.

Section 4.Severability.

If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of this act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

Section 5.Implementation.

The provisions of this act shall be effective thirty (30) calendar days after passage.

APPEARANCE AND DRESS CODE CONSIDERATION

For some reason, a large portion of bouncers and professional security agents in this industry ignore this topic. Your appearance says so much about you, the establishment's standards, and how seriously you take your job.

Always maintain a high standard in your appearance, clothing and conduct. If you pay attention to the following guidelines, you will reduce your stress throughout the night and gain a professional reputation.

1. Shower and have a clean cut appearance
2. Always have fresh breath
3. Always wear a company owned SECURITY shirt so patrons can clearly identify who you are
4. Wear clean and comfortable shoes. Most likely you will be on your feet for a majority of the night.
5. Do not insult patrons (even though they may deserve it)
6. Be pleasant and smile.
7. Greet everyone, make eye contact and make him or her feel welcome! They are spending money in this establishment. Some of that money is ALWAYS used to pay the STAFF!

HOW PATRONS "SIZE UP" BOUNCERS/DOOR STAFF

Door attendants and bouncers are immediately sized up by all genders… just for different reasons in most cases. All patrons tend to look at:

- Size
- Appearance of strength
- Alertness
- Verbal confidence (is he talking to everyone, making eye contact, etc.)
- Physical confidence (is he physically covering/blocking the door)
- Demeanor – is he cool & calm? Any angry hot head? Does he have little man's syndrome? Is he an over confident big man?
- Distractibility – How can he be distracted? Ego stroking? Pretty patrons? Verbal aggression/challenge?
- Can they be swayed by my sexuality?
- Does he back down from female aggression? (Not out of physical fear but fear of being sued on a false premise, embarrassed, etc.)

All genders will test boundaries by attempting bribes, intimidation, name-dropping and more. This list is just the beginning. The more you work in the industry… the more you will see how security staff is sized up. BE ALERT!

RESPONSIBILITES OF A BOUNCER

A bouncer could either perform duties at the door of an establishment or as floor security. Each role has different tasks and responsibilities.

A bouncer at the door does the following:

- Verify IDs for legal age
- Deny entry to anyone who is not following the rules or underage
- Ensure guests pay the cover charge
- Confiscate any illegal goods, such as drugs or weapons
- Monitor foot traffic in and out of the establishment
- Patrol the outside for any potential threats

Floor security personnel perform these duties:

- Monitor the floor for illegal goods
- Help bartenders from over-serving guests
- Give guests warnings if they behave disorderly
- De-escalate conflict between patrons
- Escort patrons that refuse to leave
- Call law enforcement when they need additional help
- Detain those committing potential crimes in a safe way
- Assist intoxicated guests with finding safe transportation home
- Cleaning up the empty glassware and bottles(POTENTIAL WEAPONS)

BOUNCER SKILLS AND SUGGESTIONS FOR A SMOOTH SHIFT

The following skills and suggestions gathered by several reputable sources who have been in the industry for years with ensure a much smoother shift than an untrainied, less knowledgeable bouncer.

Etiquette & Courtesy

- Cursing or making loud threats to patrons will paint the establishment in a bad light.
- Carry yourself in a way that you would want to visit this establishment on a night off
- Another reason to remain courteous to bar patrons is "back up". Many patrons will have your back if they respect you when an incident occurs. The last thing you want is other patrons jumping into an incident against you.
- Lastly, "character references" in court. If you are summonsed to court and sued by a patron, you will want the odds stacked in your favor. Your reputation can go a long way and should be held in the highest regard. It begins with etiquette and courtesy.

MBWA (Manage By Walking Around)

- Obviously, if assigned to the front door, you cannot follow this.
- Move around, be seen, and introduce yourself to the patrons.
- Be smooth about the introduction and be on your way

Gaining rapport with regulars, its' tactical value and use teamwork

- Again, remain courteous and you will have back-up and or crowd control
- Crowd control is everything in a crowded nightclub. Be aware.
- Always know where your coworkers are positioned
- Everyone is different and has a different approach. Always try and talk down the situation before it gets physical.
- Provide physical back up to your co workers
- Physically control the incident and restrain patrons if needed before injury occurs
- Be a team. One person should always be on crowd control if there is an incident going on. Another bouncer should be calling the police. Another bouncer should be securing any bottles/glass/and or weapons etc. **USE TEAMWORK AND NEVER PUT YOURSELF IN HARMS WAY**

REFUSING ENTRY OR TRESPASSING A PATRON

It is important to learn some of the several legal reasons to refuse service. The most important law to follow is the Civil Rights Act of 1964. This law **explicitly prohibits establishments from refusing service to patrons based on race, color, religion, or natural origin**. Outside of this law, the most common acts of refusal, but not limited too are as follows:

- Patrons that act in a certain way that is rude or disruptive to other guest
- Overfilling the capacity limit on your license
- Patrons that enter facility outside of business hours
- Patrons lacking adequate hygiene or cleanliness, discrimination for this purpose is acceptable because it puts the health and safety of others in establishment at risk.
- Pets. This is a violation of local health ordinances. One exception would be if the dog were a service dog and protected by the American Disabilities Act (ADA).
- Patrons not adhering to a dress code (shirts and shoes required)

Anyone who represents the property owner or leaseholder can revoke permission (trespass) a patron with the assistance of the Nantucket Police Department. Once served by NPD, each employee will be notified to not let this patron back on the property. If this patron returns, the Nantucket Police Department will be notified to remove the patron and possibly detain.

PROBLEMS ARISING AT THE DOOR/POINT OF ENTRY

When an aggressive customer is standing free with plenty of space to move in, they have an indeterminate set of options to use against you. Because of this freedom, their behavior will be too unpredictable. Should they attack, your defensive response will be too slow and you will suffer. Control and dominate the aggressive patron, mentally and physically by standing properly, holding them and talking to them in a specific way that allows you to predict their reactions.

You must always strive to dictate the pace of events and control the potentially violent situation. This can be achieved by:

1. REDUCING THE OPTION

    - Your stance must at all times, present both a physical and mental barrier to the person you are confronting. Use a side on stance in order to present as small a target as possible. This stance will also reduce the options available to the potential attacker. Your hands must be used to cover your upper body. This in turn will present another obstacle course for the potential attacker. Keep your palms facing the person. This looks more non-aggressive and may reduce the tension of the situation. The open palm position will allow you to immediately carry out palm heel attacks and parry their fist attacks. In order to further limit the aggressive patron's options; physically restrain them in a non-aggressive way that will elicit a response from them. For example, the simple act of holding the back of one of their elbows and pushing it across their body will close down their whole body and lead them to committing an act that you have already predicted. By reducing the aggressive patron's options, you have also reduced your options. This will help to make your response more positive and successful.

2. CONTROLLING THE SPACE

Show them the threshold, the physical and mental barrier, which they must not cross. The point where your personal space starts must be clearly delineated. At the same time, you must physically cover the door so that anyone trying to gain entry will have to force his or her way past you. Keep at least two meters clear behind yourself. When you have to instinctively duck, jump back or shoot back, you will do this without impacting against the wall. Always try to maneuver the other person so that they do not have a solid object, stairs or steps immediately behind them. It is difficult enough to cope with the after effects of 'dropping' someone with a couple of clear shots without having to cope with the blood and concussion from a busted skull. If you have the time, always close the door on the problem. If you are at a double door, close one side. That way, the opponent will be more vulnerable as they try to gain entrance to your venue. For example, if the door way is narrow they will be unable to use haymaker punches. The narrowing of their front also restricts their fighting to a couple of minor tactics, such as kicking out to force you back. You are less restricted on the other side of the door. You have more scope to react to the gatecrasher.

3. CONTROLLING THE DIALOGUE

Fights on the door have a general three-phase pattern.

- PHASE ONE- The individual will try to talk their way into the venue. You must explain why they are not allowed into the venue. Always try to stay as impersonal as possible.

- PHASE TWO- The individual will start to pump up on adrenalin, getting ready to rumble. If you do not insult them, they will work on an excuse for attacking you. For example, 'You must think I'm some kind of asshole?? Don't you?!!' You must keep calm, do not argue but do keep talking. Always try to resolve the situation by using your de-escalation skills. This is your last chance to defuse the situation. If you have back up, try to step back and allow the back up to replace you. This tactic will force the individual to start all over again. It will stop the individual from focusing solely on you. Always let the opposition know that they are fighting more than one person. The situation must never deteriorate into a personal person-to-person fight.

- PHASE THREE- The situation starts to go physical, you are being tested out and the individual is still pumping up on adrenalin. They will push forward and you push them back. They are no longer talking, just grunting and growling most of the time. They have mentally noted your stance and how you reacted to the initial pushes, you are now about to be attacked. They will go silent and wait for you to look away or become distracted. When you take your attention off the Screamers, the Reptiles or the Fighters you may or will be hit hard. PAY ATTENTION. A coworker must call the police and all parties must try and protect themselves while detaining the aggressor.

To summarize, if you strike preemptively, you will know when, where and how to strike. This will conclude the situation as humanely as possible. If you are attacked, and honestly believe that you are in serious danger of being hurt, you fight from instinct to survive. There is no humanity involved when you are fighting for your life

PROPERLY CHECKING ID'S

All STAFF MEMBERS are responsible for reading an ID accurately. There are books located by the door provided by the Alcohol Beverage Control Commission ("ABCC") on how to determine if an ID is real or not. It is your responsibility to learn the acceptable forms of ID's in Massachusetts. These helpful hints will help or can be used as a guideline.

ACCEPTABLE FORMS OF ID'S

- Military Identification Card
- Passport issued by the United States or a government that if officially recognized by the United States
- A Massachusetts Driver's License
- Massachusetts Liquor ID card
- A Massachusetts State ID card

HELPFUL HINTS

USE THE FLAG METHOD

FEEL

- IDENTIFY THE TACTILE FEATURES OF AN ID
- CHECK FOR LASER EMBOSSING ON SIGNATURE AND DOB
- FEEL THE MAGNETIC STRIP TO SEE IF ITS BEEN SEALED PROPERLY

LOOK

- FIND THE FEATURES THAT ARE IDENTIFIABLE TO THE NAKED EYE SUCH AS
- TRNSPARENT IMAGERY
- EXPIRATION DATE
- LASER ENGRAVING (OUTLINE STATE OR STATE-SPECIFIC EMBLEM)

ASK QUESTIONS- While knowledge-based authentication (KBA) is generally ineffective by itself, using KBS can help you catch underage drinkers in the moment. Ask them to confirm:

- Driver's license number
- Zip code
- Date of birth

GIVE BACK OR GET IN- If you can confirm the ID is real, proceed with the sale. If you have reasonable doubt that the ID is fake, you should confiscate it and turn it over to the appropriate authorities.

PROTECT YOURSELF AND THE ESTABLISHMENT

WRITTEN TEST

1. **What one is NOT an example of causes for violent conflict between patrons and club security?**
    - A. Violent intentions of the patron
    - B. Alcohol/drugs
    - C. Poor attitude of the bouncer
    - D. Being hungry
    - E. Lack of training in social interaction skills for security staff

2. **When a group arrives at the door, it is imperative to not let them intimidate or rush you before you check out the following: (circle all that apply)**
    - A. Age
    - B. Group Identity
    - C. Appropriate dress
    - D. Barred persons
    - E. Disabilities
    - F. General demeanor
    - G. Level of sobriety

3. **A heated, intense argument can lead to physical assault, even when you physically intervene. Your aim in dealing with arguments is to : (circle all that apply)**
    - A. Throw the first punch
    - B. Act as a neutral mediator
    - C. Suggest a compromise to resolve the argument
    - D. Diffuse the situation

4. **What are the four steps to Risk Assessment: (circle all that apply)**
    - A. Pre-empt and defuse the situation in order to reduce the risk
    - B. Identify the risk, well in advance
    - C. Grab a weapon
    - D. Inform the full team of the threat. That is, if you are part of a team
    - E. React positively when the situation goes ballistic

5. __________________________- is a detailed and honest report of any incident that requires reporting while you are on duty.

A. Time sheet
B. Lottery ticket
C. Incident Report
D. No trespass order

6. Circle all proper forms of ID's for proof of age that are acceptable in Massachusetts:

A. Military Identification Card
B. Passport issued by the United States or a government that if officially recognized by the United States
C. A Massachusetts Driver's License
D. A Massachusetts Liquor ID card
E. A College ID card
F. A Massachusetts State ID card

7. True of False. The sex of the individual can play a part in the duration it takes to become intoxicated:

A. True
B. False

8. Circle all cue that make help you recognize an active drug dealer in the establishment:

A. A constant flow of visitors who do not order a drink
B. Frequent trips to the bathroom, parking lot, patio Etc.
C. May constantly leave the premise to supply an individual with drugs.
D. Dealer may be on "edge". Watch for the fear of being caught
E. Dealer may be dressed in a suit.

9. What are some proactive Bouncer drills one can use during his/her shift: (Circle all that apply)

A. Allow patrons to take their drinks to the toilet
B. Constantly check for empty drink glasses/bottles to ensure safety.
C. Stay alert and awake
D. Have Management post signs that warn patrons of the rules of the establishment
E. Assume a fight will break out before it does and get physical with the patron

10. **The establishment can be sued if a patron has been overserved, drives home and gets in an accident causing serious death or injury:**
    A. True
    B. False

11. **It is always ok to accept a bribe at the door to let a patron in who is underage or does not want to pay a high cover charge:**
    A. True
    B. False

12. **Your primary duty as a bouncer is to prevent trouble, not to deal with it. The more proactive and preemptive your behavior is, the more remote the chance there is of trouble starting:**
    A. True
    B. False

13. **Before approaching a patron sleeping at the bar, it is first best to find out:**
    A. Their age
    B. If they have any friends to assist
    C. Is it alcohol or drug induced
    D. None of the above

14. **You must always strive to dictate the pace of events and control the potential violent situation at the door or inside the venue. This can be achieved by: (circle all that apply)**
    A. Controlling the dialogue
    B. Controlling the space
    C. Running away
    D. Reducing the options

15. **Customers who must leave early are those who are abusing the staff or patrons. It is best to first ask them to follow you out the door before taking action:**
    A. True
    B. False

16. How many phases are included in "CONTROLLING THE DIALOGUE"?

A. One
B. Two
C. Three
D. Four

17. What is the capacity of the Muse (including all staff and patrons)?

A. 275
B. 372
C. 410
D. 384

18. What law explicitly prohibits establishments from refusing service to patrons based on race, color, religion, or natural origin?

A. American Disabilities Act
B. Civil Rights Act of 1964
C. The Great Law of Peace
D. Illegal search and seizure

19. Can a person be asked to leave the establishment due to their hygiene?

A. Yes
B. No

20. Who ensures the guest pay the cover charge at the door?

A. Bartenders
B. Floor Security
C. Owner
D. Bouncer/Front door staff

I, ____ (Print Name) have reviewed the Muse Security Protocol and Procedures binder, completed the quiz and submitted to MGMT.

X____

Signature Date

I, ____ (Print Name) have read the acceptable forms of ID accepted by the Alcoholic Beverage Control Commission to purchase alcohol in the State of Massachusetts. It is my duty to check the Identification of each patron. It is my right to refuse entry to any/all patrons who may not have proper ID.

X.____

Signature Date

Thank you,

Muse Management