

**LEASE AGREEMENT
TO LEASE AND IMPROVE THE WATERFRONT RESTAURANT AND BAR
AT THE FORT PIERCE CITY MARINA**

THIS LEASE AGREEMENT is entered into this 3rd day of December, 2018, by and between the **CITY OF FORT PIERCE, FLORIDA**, a municipal corporation, (hereafter "LANDLORD") whose address is 100 North U.S. 1, Fort Pierce, Florida 34950; and **WINKING STARFISH, LLC**, a Florida Limited Liability Company, (hereafter "TENANT"), whose business address is 11201 Corporate Circle N, Suite 100, St. Petersburg, FL 33716.

**ARTICLE I
PREMISES**

1.1 Premises. Subject to the terms and provisions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the real property described on the attached Exhibit A (the "Demised Premises") and located at 2 Avenue A, Fort Pierce, Florida, 34950, including, without limitation, the existing restaurant building currently located on the Land (the "Existing Building"), and all other buildings, structures, and other improvements located on the Land (with the Existing Building, collectively, the "Improvements"), and further described as Parcel ID: 2410-503-0041-040-0 containing a gross land area of 9,804 square feet. The Land and the Improvements are, collectively, the "Demised Premises".

1.2 Effective Date. The "Effective Date" will be forty-five (45) calendar days from the date notice is provided by the Tenant, and accepted by the Landlord, that the final approval of all required permits to commence the development of the project have been received. Tenant accepts the Premises in their "AS IS, WHERE IS" condition as of the Effective Date.

**ARTICLE II
TERM**

2.1 Lease Term. Tenant shall have leasehold rights to demolish the Existing Building on the Premises and build the Building (as defined in Section 3.1 below), pursuant to this Lease, as of the Effective Date. The term of this Lease (the "Term") shall be for a period of 20 years, commencing on the Substantial Completion Date (as defined in Section 3.4 below), unless sooner terminated pursuant to the terms of this Lease. Tenant shall have an option to renew this Lease for two (2) additional five (5) year terms. Tenant shall furnish Landlord with a minimum of one (1) year written notice of its intention to exercise this option prior to the expiration of the twenty (20) year lease term.

ARTICLE III
CONSTRUCTION OF NEW RESTAURANT BUILDING

3.1 Construction of New Restaurant Building. Tenant shall, at its expense, demolish the Existing Building and design and construct on the Land a new restaurant building (the "Building"), estimated at \$2,600,000.00, subject to the terms and conditions of this Article III (the "Tenant Work"). It is mutually understood that Tenant Work does not include Tenant's equipment, fixtures, or other personal property placed on the Premises. Tenant anticipates that Substantial Completion (as defined below) of the Tenant Work will occur on or about March, 2020. Tenant shall use all commercially diligent efforts, as quickly as reasonably practicable, to obtain all permits and approvals necessary to construct the Tenant Work and to achieve Substantial Completion of the Tenant Work.

In addition to the construction of the proposed restaurant Building, the Landlord and Tenant reserve the right to negotiate the terms for the construction of the Marina Fuel Building concurrently with the restaurant construction. Any such agreement may be finalized through an addendum to this agreement. It has been determined that the buildings must be constructed concurrently because of inaccessibility to the area dedicated to the Marina Fuel Building once the proposed restaurant is completed. If agreement cannot be reached, the parties will proceed under the existing lease terms.

3.2 Plans and Approvals. Tenant shall provide plans and specifications for the Tenant Work to Landlord for Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Such plans and specifications shall include, without limitation, any site plans, floor plans, and elevations (including, without limitation, exterior shades, awnings, window coverings, lights, and canopies) prepared for the Tenant Work. The plans and specifications approved by Landlord and Tenant, and any construction or permit drawings prepared by Tenant's architect based on such approved plans and specifications, are, collectively, the "Final Plans."

3.3 Requirements. All Tenant Work shall be completed in compliance with applicable Legal Requirements (as defined in Section 6.4 below), and in a good and workmanlike manner, by licensed contractors with appropriate building permits.

Tenant agrees to require that the general contractor performing the Tenant Work shall maintain:

(a) Builder's Risk insurance on the Building on an all-risk basis and in an amount equal to the contract amount of the Tenant Work, naming the landlord as a loss payee and additional insured.

(b) Commercial General Liability insurance with minimum limits of at least \$1,000,000 per occurrence and \$2,000,000, general aggregate and naming the Landlord and its officials, officers and employees as "Additional Insureds" on a form no more restrictive than the latest edition of ISO Form CG 20 10 (Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization Endorsement) and ISO form CG 20 37 (Additional Insured – Owners, Lessees or Contractors-Completed Operations). Contractor shall continue to maintain products/completed operations coverage in the amounts stated above for a period of three (3) years after the final completion of the Tenant Work.

(c) Automobile Liability insurance with minimum coverage limits of \$1,000,000 each occurrence - bodily injury and property damage combined for liability arising out of the ownership, maintenance or use of the Contractor's owned, hired and non-owned automobiles.

(d) Contractor's Pollution insurance with minimum limits of at least \$1,000,000 per occurrence and \$2,000,000, general aggregate.

(e) Design Professional Liability insurance for liability arising out of rendering or failure to render professional architectural design and engineering services in the performance of the Tenant Work, with minimum coverage limits of \$1,000,000 per occurrence or per claim. If coverage is on an occurrence basis the coverage must be maintained for at least three years after completion of the work. If coverage is on a claims-made basis, the contractor shall purchase, at its own expense, an extended reporting period ("tail" coverage) of at least three years.

(f) performance and payment bonds for the Tenant Work and completion of the Building, in the form and amounts required by Section 255.05, Florida Statutes.

3.4 Substantial Completion. The term "Substantial Completion" means substantial completion of the Tenant Work in accordance with the Final Plans, as evidenced by Tenant's receipt of all approvals necessary for Tenant to occupy and operate its restaurant in the Building, including, without limitation, a certificate of occupancy for the Building. The date on which Substantial Completion occurs is the "Substantial Completion Date."

3.5 Total Project Costs. The term "Total Project Costs" means the sum of all costs and expenses paid or incurred by Tenant for the design, engineering, permitting, construction, and installation of the Tenant Work.

3.6 Confirmation of Dates and Amounts. Within 30 days after the Substantial Completion Date, Landlord and Tenant shall execute a written instrument prepared by Tenant and memorializing (a) the Substantial Completion Date; (b) the Rent Commencement Date; (c) the Total Project Costs; (d) the Base Rent amounts payable by Tenant throughout the Term; and (e) the total amount of air conditioned square footage of the Building (the "Building Square Footage").

ARTICLE IV RENT

4.1 Base Rent. Commencing on the Substantial Completion Date, Tenant shall pay to Landlord annual base rent in the amounts set forth in Exhibit D (as more particularly defined in Exhibit B, the "Base Rent"). The Base Rent of \$159,558.00 per year, shall be paid monthly, in 12 equal monthly installments, on or before the first day of such calendar month. The Base Rent and any other amounts owed by Tenant to Landlord under this Lease are, collectively, the "Rent". Tenant shall make all Rent payments to Landlord at the address listed in Section 18.7, or to such other address as Landlord may from time to time designate by written notice to Tenant. Tenant's Base Rent shall be appropriately prorated for any partial month during which the Rent Commencement Date or the expiration or termination date of this Lease occurs. On the first day of the second Rental Year and each subsequent Rental Year; the Base Rent shall increase by two percent (2%), which annual increases shall be on a cumulative, compounding basis.

4.2 Percentage Rent.

(a) Commencing on the Rent Commencement Date and for each subsequent Sales Period (as defined below) during the Term, Tenant shall pay to Landlord, in addition to Base Rent, "Percentage Rent" in an amount equal to (i) two percent (2%) of Food Sales (as defined below) for such Sales Period (as defined below) in excess of the Food Sales Breakpoint (as defined below), and (ii) seven percent (7%) of Alcohol Sales (as defined below) for such Sales Period in excess of the Alcohol Sales Breakpoint (as defined below) and (iii) five percent (5%) of Ice Cream Sales (as defined below) for such Sales Period (as defined below) in excess of the Ice Cream Sales Breakpoint (as defined below),.

(b) For each Sales Period during the Term, the "Food Sales Breakpoint" means \$2,500,000.00; the term "Alcohol Sales Breakpoint" means \$600,000.00; and the term "Ice Cream Sales Breakpoint" means \$100,000.00.

(c) The term "Gross Sales" means all revenue generated from food and beverages sold in or from the Premises and Outdoor Seating Area by Tenant; provided, however, the following shall be excluded from Gross Sales: (i) refunds to customers on transactions otherwise included in Gross Sales; (ii) sales from vending

machines used primarily for employee purposes; (iii) all sums representing sales taxes collected from customers and paid over to the applicable taxing authority; (iv) the transfer of food or beverages from the Premises to another store or a place of business owned or operated by Tenant or one of its affiliates; (v) donations of food or beverages to non-profit charitable and religious institutions; (vi) returns to shippers or manufacturers. The term "Food Sales" means Gross Sales attributable to the sale of food; the term "Alcohol Sales" means Gross Sales attributable to the sale of beer, wine, and liquor; and the term "Ice Cream Sales" means Gross Sales attributable to the sale of ice cream products. "Sales Period" means each successive four (4) week period during the Term, commencing on the Rent Commencement Date.

(d) Percentage Rent shall be paid by Tenant within 30 days after the end of each Sales Period. Each payment of Percentage Rent shall be accompanied by a statement setting forth Gross Sales made during such Sales Period and signed and certified as correct by an officer of Tenant. Upon written request from Landlord given with 15 days after receipt of Tenant's annual Gross Sales statement for a Sales Period, Tenant shall provide Landlord with reasonable back-up documentation regarding Tenant's calculation of Gross Sales for such Sales Period.

4.3 Tax on Rents. Tenant shall be responsible for and shall pay to Landlord all federal, state, or local sales and use taxes (or taxes or assessments in lieu thereof) payable with respect to the Rent and all other sums payable under this Lease by Tenant.

4.4 Late Charge. Tenant shall pay a late charge of five percent (5%) of the total amount overdue if any installment of Rent or any other amount due from Tenant to Landlord is received by Landlord more than five business days after the applicable due date. This charge is for extra expenses incurred by Landlord and shall not be considered interest or penalty.

ARTICLE V ALTERATIONS AND TENANT EQUIPMENT

5.1 Alterations. Tenant shall not make any alterations, additions or improvements to the Demised Premises without the prior written consent of Landlord, except for the installation of unattached, movable trade fixtures which may be installed without defacing the Demised Premises. All alterations, additions, improvements and fixtures (other than movable trade fixtures) which may be made or installed upon the Demised Premises shall become the property of Landlord upon installation and shall remain upon and be surrendered with the Demised Premises at the termination of the Lease unless Landlord requests their removal, in which event Tenant shall remove the same and restore the Demised Premises to the

original condition at Tenant's expense. Any linoleum, carpeting or other floor covering which may be cemented or otherwise affixed to the floor of the Demised Premises shall be a permanent fixture and shall become the property of Landlord without credit or compensation to Tenant.

5.2 Ownership of Improvements. During the Term, Tenant shall be considered for income tax purposes to be the owner of the Building and any other Alterations and Improvements made by or on behalf of Tenant following the Effective Date, and Tenant alone shall be entitled to take tax deductions on its federal and state income tax returns for the depreciation and other expenses related to such improvements. Upon expiration or earlier termination of this Lease, the ownership of such improvements made by or on behalf of Tenant shall belong to Landlord, except as expressly provided otherwise in this Lease.

5.3 Tenant Equipment. Title to any building, structure, or other improvements (other than movable trade fixtures) that shall be constructed, installed, or placed upon the Demised Premises shall vest in Landlord upon the termination of this Lease or any renewal or extension thereof, and Tenant acknowledges that it shall have no right to remove such fixed and permanent improvements and any fixed appliances, apparatus, or equipment related to the improvements, including all replacements, accessories and modifications thereof from the Demised Premises.

5.4 Liens. Neither Landlord nor Tenant shall cause or permit to be recorded, filed, claimed, or asserted against the Premises any mechanic's lien for supplies, machinery, tools, equipment, labor, or material contracted for by, through, or under such party and furnished or used in connection with any construction, development, alteration, improvement, addition to, repair to, or maintenance of any Improvements, and if Landlord or Tenant causes or permits any such lien to be so recorded, filed, claimed, or asserted, the responsible party shall cause the same to be released or discharged within 30 days thereafter. If either party breaches the foregoing covenant, the other party may cause any such claimed lien to be released of record by bonding or payment or any other means available. The defaulting party shall pay to the non-defaulting party on demand all sums paid and costs, including reasonable attorneys' fees, incurred by the non-defaulting party in connection therewith.

NOTHING IN THIS LEASE SHALL BE DEEMED TO BE, OR CONSTRUED AS CONSTITUTING, THE CONSENT OR REQUEST OF LANDLORD, EXPRESSED OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PERSON, FIRM, OR CORPORATION FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS FOR ANY CONSTRUCTION, REBUILDING, ALTERATION, OR REPAIR OF OR TO THE PREMISES OR ANY PART THEREOF, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY

TO CONTRACT FOR OR PERMIT THE RENDERING OF ANY SERVICES OR THE FURNISHING OF ANY MATERIALS THAT MIGHT IN ANY WAY GIVE RISE TO THE RIGHT TO FILE ANY LIEN AGAINST THE BUILDING OR LANDLORD'S INTEREST IN THE PREMISES. TENANT SHALL NOTIFY ANY CONTRACTOR PERFORMING ANY CONSTRUCTION WORK AT THE PREMISES ON BEHALF OF TENANT THAT THIS LEASE SPECIFICALLY PROVIDES THAT THE INTEREST OF LANDLORD IN THE PREMISES SHALL NOT BE SUBJECT TO LIENS FOR IMPROVEMENTS MADE BY TENANT, AND NO MECHANIC'S LIEN OR OTHER LIEN FOR ANY SUCH LABOR, SERVICES, MATERIALS, SUPPLIES, MACHINERY, FIXTURES, OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE ESTATE OR INTEREST OF LANDLORD IN AND TO THE PREMISES, THE BUILDING, OR ANY PORTION THEREOF. IN ADDITION, LANDLORD SHALL HAVE THE RIGHT TO POST AND KEEP POSTED AT ALL REASONABLE TIMES ON THE PREMISES ANY NOTICES WHICH LANDLORD SHALL BE REQUIRED SO TO POST FOR THE PROTECTION OF LANDLORD AND THE PREMISES FROM ANY SUCH LIEN. TENANT AGREES TO PROMPTLY EXECUTE SUCH INSTRUMENTS IN RECORDABLE FORM IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF FLORIDA STATUTE 713.10.

ARTICLE VI USE & OPERATIONS; COMPLIANCE WITH LAWS

6.1 Use. Tenant shall use the Premises for the operation of a full service restaurant and bar, including liquor, beer, and wine sales for on-premises consumption, initially under the trade name "Crabby's Dockside Fort Pierce", including the incidental sale of Tenant's branded clothing and merchandise, or for such other restaurant use that complies with all Legal Requirements (the "Permitted Use"), and for no other use without Landlord's prior written consent.

6.2 Hours of Operation. At all times during this Lease, the minimum hours of operation from shall be from 11:00 a.m. to 10:00 p.m., seven (7) days per week unless agreed otherwise in writing by Landlord, with the exception of Easter, Thanksgiving and Christmas. Tenant further acknowledges the need for the continuous and regular operation of its restaurant facility, including the duty to exercise best management practices, and the operation of said business as provided for herein shall be a separate covenant under this Lease. Tenant shall have the right to extend business hours at its election. The Tenant agrees that any live music shall end at 11:00 p.m. unless advance permission from the Landlord or designee is obtained. In any event, all music and other activities must comply with the City's noise ordinance.

6.3 Continuous Operations. During the Term, and except during Excused Periods, Tenant shall continuously operate and conduct business at the Premises for the Permitted Use. The term "Excused Periods" means periods of time during which Tenant's failure or refusal to conduct the operations of its business (a) results from alterations, renovations, or repairs being performed in and to the Premises for a continuous period not in excess of an aggregate of fifteen 15 days (or such longer period that is approved by Landlord in writing and in advance) in any consecutive 12 month period; (b) is caused by Force Majeure, damage or destruction, or eminent domain proceedings or actions; (c) is caused by any act or omission of Landlord; or (d) is during the following holidays: Easter Sunday, Thanksgiving Day, or Christmas Day.

6.4 Tenant's Conduct. Tenant shall operate its business in an efficient, high class, and reputable manner. Tenant shall keep the Premises neat, clean, sanitary, and reasonably free from dirt, rubbish, insects, and pests at all times. Tenant shall not (a) use or maintain the Premises in such a manner as to constitute an actionable nuisance to Landlord or any third party, or (b) commit or permit waste of the Premises.

6.5 Common Area. The term Common Area: shall mean that part of the entire adjacent marina property owned and operated by the Landlord located at One Avenue "A", Fort Pierce, Florida 34950 as designated by Landlord from time to time for the common use of all occupants of the Fort Pierce City Marina, including, among other facilities, parking area, walkways, landscaping, and loading areas, all of which shall be subject to Landlord's sole management and control. Tenant and its employees, customers, subtenants, licensees and concessionaires shall have the nonexclusive right and license to use the Common Area, to include the use of the landing/day dock area, as constituted from time to time, such use to be in common with Landlord, other tenants and occupants of the property, and all other persons permitted by Landlord to use the same and subject to such reasonable rules and regulations governing the use thereof as Landlord may from time to time prescribe, including the designation of specific areas within the property or in reasonable proximity thereto in which automobiles and vehicles owned or operated by Tenant, its employees, business invitees, and licensees shall travel or be parked. Landlord shall operate, maintain and repair the Common Area in such a manner as Landlord shall in its sole discretion determine.

6.6 Compliance with Laws. Tenant shall, at its expense, (a) obtain any and all occupational licenses (business tax receipt) beverage licenses, and other permits and approvals required for the operation of Tenant's business at the Premises, and (b) comply with all laws, codes, regulations, orders, and ordinances, including, without limitation, the City of Fort Pierce Code of Ordinances and the regulations and orders of the Florida Department of Business and Professional Regulation,

applicable to Tenant's use and occupancy of the Premises (collectively, "Legal Requirements").

ARTICLE VII SIGNS

7.1 Signs. Tenant shall, at its expense, have the right to install signs related to Tenant's business in or on the Premises, or in areas coordinated with and approved by the Landlord or designee. Any signs installed by Tenant shall comply with all Legal Requirements. Tenant shall, at its expense, maintain its signs in good condition and repair. Upon the expiration or earlier termination of the Lease, Tenant shall remove any signs installed by Tenant in or on the Premises.

ARTICLE VIII UTILITIES

8.1 Utilities. During the Term, Tenant shall contract in its own name, and pay directly to the applicable public utility, for all water, sewer, electricity, gas, telephone, communication, stormwater, solid waste collection, and other utility charges and fees related to the Premises. The Landlord recognizes the ongoing challenges of garbage removal in the marina waterfront area and will work closely with the Tenant in an effort to address the volume of garbage and recycling materials in a mutually agreeable manner.

ARTICLE IX MAINTENANCE AND REPAIR

9.1 Maintenance and Repair. During the Term, Tenant shall, at its expense, maintain the entire Premises in good order, condition, and repair (including necessary replacements), subject to reasonable wear and tear. Without limiting the foregoing, Tenant shall keep all restroom facilities clean and sanitary, and no coin-operated toilets or other coin-operated devices will be allowed in the restroom facilities without prior written approval of Landlord.

9.2 On-Going Capital Improvements or Repairs.

(a) Tenant shall maintain the Premises in a first class operating condition according to acceptable industry standards and applicable codes. Landlord has the right to inspect the Premises at any time upon reasonable prior notice to Tenant, and Landlord will provide written notice to Tenant of any improvements or repairs that Landlord believes are necessary to comply with the aforementioned standards. If Tenant contests the necessity of an improvement or repair requested by Landlord, and at any other time at the request of either party (but not more frequently than once in any 12 month period), Landlord and Tenant shall meet in good faith to

discuss the need for any improvements or repairs necessary to comply with the aforementioned standards and to resolve any disputes relating thereto.

(b) If any improvement or repair described in Section 9.2(a) has not commenced within 30 days after Tenant's receipt of written notice from Landlord (or, if later, the date on which the need for such improvement or repair has been conclusively determined pursuant to this Section 9.2), Landlord has the right to self-perform the improvement or repair. If it becomes necessary for Landlord to self-perform any such improvement or repair, Landlord will prepare a cost estimate of the work to be performed, and Tenant will reimburse Landlord for the costs of such improvement or repair, as additional Rent, in the following applicable monthly period after the improvements and repairs are completed and an invoice is presented.

ARTICLE X TAXES AND FEES

10.1 Payment of Taxes and other Fees. Tenant shall be responsible to pay the real property taxes applicable to the Demised Premises based upon the assessed value of the restaurant facility. Upon receipt of each yearly ad valorem tax bill for the Demised Premises, Landlord shall submit an invoice to Tenant for the ad valorem taxes specified herein, and Tenant shall remit payment within fifteen (15) days of such invoice in order for Landlord to obtain the maximum applicable discount for early payment.

10.2 Proration at Commencement and End of Term. If the Rent Commencement Date or end of the Term does not coincide with the commencement or end of a tax year, Taxes for the tax year in which this Lease commences and/or ends shall be prorated between Landlord and Tenant, based on the most recent assessment. Such proration shall be subsequently adjusted when the actual bills for Taxes become available. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

ARTICLE XI INSURANCE

11.1 Maintenance of Policies. Tenant shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the Landlord, the types and amounts of insurance conforming to the minimum requirements set forth herein.

(a) All Risk Property insurance against all physical loss or damage to the Premises and Improvements (including windstorm and flood coverage), with replacement cost coverage and not subject to any coinsurance provisions. The Landlord shall be named as Loss Payee and Additional Insured. The maximum

deductible for other than windstorm, hail, earth movement or flood shall be \$25,000 per occurrence. The maximum deductible for windstorm and hail shall be the greater of \$100,000 or 5% of the estimated actual cash value of the insurable property at the time of the loss. The maximum deductible for earth movement or flood shall be \$50,000 per occurrence.

b) Commercial General Liability insurance coverage shall be provided on a form no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), and acceptable to the Landlord.

Landlord and its officials, officers and employees shall be included as "Additional Insured" on a form no more restrictive than ISO form CG 20 11 (Additional Insured – Managers or Lessors of Premises).

The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

General Aggregate:	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000
Personal and Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
Damage to Leased Premises:	\$300,000

(c) Commercial Automobile Liability insurance shall be provided on a form no more restrictive than that provided by the Standard Business Auto Policy (ISO Form CA 00 01, as filed for use in the State of Florida by the Insurance Service Office, without any restrictive endorsements and including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the tenants use or occupancy of the premises. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000 Each Occurrence - Bodily Injury and Property Damage Combined

(d) Workers' Compensation/Employer's Liability Insurance shall be provided on a form no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements other than those endorsements which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	\$500,000	Each Accident
	\$500,000	Disease – Policy Limit
	\$500,000	Disease – Each Employee

The Workers' Compensation Policy must be endorsed to waive the insurer's right to subrogate against the Landlord, and its officials, officers and employees in the manner which would result from the attachment of the NCCI Waiver Of Our Right To Recover From Others Endorsement (Advisory Form WC 00 03 13) with the City of Ft. Pierce and its officials, officers and employees scheduled thereon.

(e) Liquor Liability Coverage shall be maintained during any Periods that Tenant sells or serves alcoholic beverages at the premises. Such insurance shall cover liability of Tenant arising out of the sale of alcoholic beverages on the Premises and in the course of their business and name the Landlord as an Additional Insured. The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$1,000,000 General Aggregate

\$1,000,000 Each Occurrence

11.2 Insurance Providers. The Insurance required by Section 11.1 above shall be written by insurance companies authorized to conduct insurance business in the state of Florida and shall have and maintain a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A. M. Best Company.

11.3 Premiums. Tenant shall (a) pay all premiums for the insurance required by Section 11.1 above as and when due, (b) timely renew or replace each policy, and (c) deliver to Landlord certificates evidencing such coverage.

11.4 Waiver of Subrogation. Each party releases the other party, and waives its entire right of recovery against the other party, for all direct, consequential, or other loss or damage arising out of or related to any damage to the releasing and waiving party's property that is covered by property insurance carried by the releasing and waiving party, whether or not such loss or damage was caused by the negligence of the other party or its agents, employees, contractors and/or invitees.

11.5 Periodic Modifications. Upon the written request of either Party, their representatives shall meet to discuss possible modifications to any of the foregoing insurance requirements if material changes in the availability and cost of the required insurance coverage warrant such action. Any changes made to the insurance required by this Agreement will be made only with the written approval of Landlord

and Tenant, which approval shall not be unreasonably withheld, conditioned or delayed. Not more than once every three (3) Contract Years, Landlord may require an increase in the amount of the required coverage maintained by Tenant.

11.6 Evidence of Compliance. As evidence of compliance with the insurance required herein, Tenant shall furnish Landlord with:

(a) a fully completed satisfactory Certificate of Insurance evidencing all coverage required herein. Also, a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of Landlord and Landlord's members, officials, officers and employees as additional insureds in the Commercial General Liability coverage; or

(b) the original of the policy(ies); or

(c) other evidence satisfactory to Landlord.

11.7 General Conditions.

(a) All policies should be endorsed to provide thirty (30) days written notice of cancellation to Landlord for all coverages. Until such insurance is no longer required by this Contract, Tenant shall provide Landlord with renewal or replacement evidence of insurance prior to the expiration or termination of such insurance at least thirty (30) days prior to the expiration or termination of such insurance.

(b) If requested to do so by Landlord, Tenant shall, within thirty (30) days after receipt of a written request from Tenant, provide Landlord with a certified, complete copy of the policies of insurance providing the coverage required.

(c) The insurance provided by Tenant shall apply on a primary basis to, and shall not require any contribution from, any insurance, or self-insurance, maintained by the Landlord or its officials, officers and employees.

(d) Except as provided herein or where prior written approval has been obtained from Landlord hereunder, no deductible or self-insured retention for any required insurance provided by Landlord pursuant to this Agreement will be allowed. To the extent there is any deductible or self-insured retention applicable to any required insurance, Tenant shall be solely responsible for paying such deductible or self-insured retention, including any amounts owed under such deductible or self-insured retention on behalf of Landlord, or its officials, officers and employees.

(e) Compliance with these insurance requirements shall not limit the liability of Tenant. Any remedy provided to the Landlord by the insurance provided by the Tenant shall be in addition to and not in lieu of any other remedy (including, but not

limited to, as an indemnitee of Tenant) available to the Landlord under this Agreement or otherwise.

(f) Neither approval nor failure to disapprove insurance furnished by Tenant shall relieve Tenant from responsibility to provide insurance as required by this Agreement.

(g) Certificates of Insurance must be completed as follows:

Certificate Holder
City of Fort Pierce
Attention: Risk Manager
100 N. U.S. Hwy 1
Fort Pierce, FL 34954-1480

Additional Insured for General Liability and Liquor Liability
City of Fort Pierce and its officials, officers and employees

ARTICLE XII INDEMNIFICATION

12.1 Indemnification. Except to the extent caused by the negligence, recklessness, or willful misconduct of Landlord, Tenant shall indemnify, hold harmless, and defend Landlord from and against any and all suits, claims, actions, damages, liability, and expense (including reasonable attorneys' fees) (collectively, "Claims") in connection with loss of life, personal injury, or damage to property arising from or out of (a) Tenant's use or occupancy of the Premises, (b) any injury or damage to any person or property occurring in or at the Premises, or (c) any negligence, recklessness, or willful misconduct of Tenant or any of its agents or employees. Nothing contained herein shall be construed as a waiver of any immunity from or limitation of liability Landlord is entitled to under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

ARTICLE XIII DAMAGE OR DESTRUCTION

13.1 Casualty Damage.

(a) Subject to Section 13.1(b) and 13.2 below, if the Improvements should be damaged or destroyed by fire, windstorm, or other casualty (a "Casualty"), Tenant shall proceed with reasonable diligence to rebuild or repair the Improvements on the Premises to substantially the condition in which they existed prior to such Casualty. If the Improvements are to be rebuilt or repaired in whole or in part following such damage, the rent payable hereunder shall be adjusted equitably in proportion to the

area damaged. Tenant's obligation to rebuild and repair under this Article XIII shall in any event be limited to restoring the Premises to substantially the same condition as existed immediately prior to the Casualty.

(b) Tenant shall have the right, at its option, to terminate this Lease in the event of a Casualty that (i) is reasonably anticipated to prevent Tenant from conducting its business in the Premises for 180 days or more, or (ii) occurs during the last 24 months of the Term. Tenant shall give Landlord written notice of its intent to terminate this Lease within 60 days after the date of the Casualty. If the Lease is terminated by Tenant pursuant to this paragraph, the Rent shall be abated for the unexpired portion of this Lease effective from the date of the Casualty, and Tenant shall not be obligated to rebuild or restore the Improvements.

13.2 Insurance Proceeds. All insurance proceeds attributable to the Improvements and paid as a result of any Casualty shall be paid to Tenant for the purpose of rebuilding or repairing the Improvements, unless Tenant terminates this Lease pursuant to this Article XIII, in which event (a) all insurance proceeds paid as a result of any Casualty damage to the Improvements owned by Landlord shall be paid to and be the property of Landlord, and (b) all insurance proceeds paid as a result of any Casualty damage to the Tenant Equipment or any Improvements owned by Tenant shall be paid to and be the property of Tenant. Landlord and Tenant shall jointly adjust, collect and compromise all claims under any casualty insurance policy required by this Lease and execute and deliver all necessary proofs of loss, receipts, vouchers, and releases required by any insurers.

ARTICLE XIV CONDEMNATION

14.1 Notice. If either Landlord or Tenant learns that any portion of the Premises has been or is proposed to be subjected to a Taking (as defined below), such party shall promptly notify the other party of such Taking. A "Taking" means the taking of all or any portion of the Premises or any and all access thereto as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use, or the sale or conveyance of all or any part of the Premises or any and all access thereto in lieu of or under the threat of eminent domain or condemnation.

14.2 Termination Option on Substantial Taking. If a Taking occurs during the Term that, in the reasonable judgment of Tenant, interferes with the use of the Premises for Tenant's intended use (a "Substantial Taking"), Tenant may, at its option and upon written notice to Landlord, terminate this Lease as of the date title

of any of the Premises subject to such Taking is transferred to the condemning authority (the "Taking Date").

14.3 Continuation of Lease. If a Taking occurs during the Term that is not a Substantial Taking, or if a Substantial Taking occurs but Tenant fails to exercise its termination option according to Section 14.2 above, this Lease shall remain in full force and effect according to its terms, except that, effective as of the Taking Date, this Lease shall terminate automatically as to any portion of the Premises taken, and the Rent payable during the remaining Term shall be adjusted equitably in proportion to the area taken.

14.4 Reconstruction. If a Taking occurs that is not a Substantial Taking, or if a Substantial Taking occurs but Tenant fails to exercise its termination option according to Section 14.2 above, Tenant shall proceed diligently to repair and restore the Improvements on the Land not so taken to the condition that existed immediately prior to the Taking or, if the Premises are not capable of being so repaired and restored, as closely to such condition as is reasonably practicable, and the Rent payable during the remaining Term shall be adjusted equitably in proportion to the area taken.

14.5 Awards. If any Taking occurs, all awards, compensation, damages, or other consideration paid or payable in connection with the Taking (collectively, the "Award") shall be allocated between Landlord and Tenant as follows: (a) Landlord shall be entitled to receive any portion of the Award attributable to the taking of Landlord's fee interest in the Land, and (b) Tenant shall be entitled to receive any portion of the Award attributable to the taking of Tenant's leasehold interest and any Improvements (including, without limitation, the Building) owned or paid for by Tenant. Tenant shall also be entitled to make a claim for the value of the Tenant Equipment and any other personal property or inventory owned by Tenant, and any moving or business relocation expenses and other business damages of Tenant. In addition, and notwithstanding the foregoing, to the extent Tenant has any restoration or repair obligations pursuant to this Article XIV, any Taking compensation, damages, or consideration paid to Landlord shall be made available to Tenant and used by Tenant for the purpose of such repair or restoration.

ARTICLE XV ASSIGNMENT AND SUBLETTING

15.1 Assignment and Subletting. Except as provided in Section 15.2 below, Tenant shall not assign Tenant's interest in this Lease, including by operation of law, or sublease the Premises or any portion thereof, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. No assignment, subletting, or other transfer shall relieve

Tenant of any liability under this Lease. Tenant shall reimburse Landlord for its reasonable costs (not to exceed \$500) in connection with reviewing any request by Tenant for Landlord's consent pursuant to this Section 15.1.

15.2 Permitted Transfers. Notwithstanding anything in this Lease to the contrary, Tenant may, without Landlord's consent, assign this Lease, sublet the Premises in whole or in part, or transfer any other interest of Tenant in this Lease or the Premises, to an entity (each, a "Permitted Transferee"): (a) controlled by, controlling, or under common control with Tenant; or (b) any successor to Tenant or Tenant's business by way of any merger or acquisition transaction; provided, however, in each case, the assignment, sublease, or transfer to such entity may not be undertaken primarily for the purposes of avoiding the restrictions on assignment or sublease contained in Section 15.1 above. Tenant shall not execute or deliver mortgage, deed of trust, collateral assignment of lease, security agreement, or other hypothecating instrument encumbering Tenant's interest under this Lease or leasehold estate in the Premises created by this Lease, in connection with any financing arrangement by Tenant.

ARTICLE XVI END OF TERM

16.1 Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in good condition and in compliance with Tenant's maintenance and repair obligations in Section 9.1 above, normal wear and tear and Casualty damage excepted. Upon the expiration or earlier termination of this Lease, Tenant shall remove all Tenant Equipment from the Premises, but Tenant shall not be obligated to remove or restore any Tenant Work or Alterations made by Tenant to the Premises.

16.2 Holding Over. In the event Tenant remains in possession of the Premises after the expiration or earlier termination of this Lease, Tenant shall be deemed to be occupying the Premises as a Tenant at sufferance, at a monthly Base Rent rate, payable in advance, equal to 125%, for the first 90 days, and 200%, thereafter, of the monthly Base Rent rate payable during the last month of the Term, and Tenant shall further be bound by all of the conditions, provisions, and obligations of this Lease to the extent applicable to a tenancy at sufferance.

ARTICLE XVII DEFAULTS AND REMEDIES

17.1 Default by Tenant. Each of the following events shall constitute an event of default (each, an "Event of Default") under this Lease:

(a) Tenant's failure to pay any Rent when due, which failure is not cured within 10 business days after written notice by Landlord to Tenant.

(b) Tenant's failure to comply with any non-monetary term, condition, or covenant of this Lease, which failure is not cured within 30 days after written notice by Landlord to Tenant; provided, however, if such default cannot reasonably be cured within 30 days, Tenant shall be entitled to such additional time as is reasonably necessary to cure such default, so long as Tenant commences curing such default within the initial 30 day period and thereafter diligently pursues such cure to completion.

(c) Tenant's vacating or abandoning the Premises, other than during Excused Periods.

(d) Tenant's interest under this Lease or in the Premises is taken upon execution or by other process of law directed against Tenant, or is subject to any attachment by any creditor or claimant against Tenant, and such attachment is not discharged or disposed of within 90 days after such levy.

17.2 Landlord's Remedies. If any Event of Default occurs, Landlord shall have any and all rights and remedies available to Landlord pursuant to applicable law and/or as set forth in this Lease. A receipt by Landlord of any sum in satisfaction of any obligation with knowledge of the breach of any provision hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision hereof shall be deemed to have been made unless expressed in a writing signed by Landlord.

ARTICLE XVIII MISCELLANEOUS

18.1 Estoppel Certificates. Within 20 business days following written request by Landlord or Tenant, the other party shall execute, acknowledge, and deliver to the requesting party a certificate indicating any or all of the following: (a) the date on which the Term of this Lease commenced and the date on which it is then scheduled to expire; (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (c) the then current monthly rent; (d) the date through which Rent has been paid; and (e) that, to the certifying party's actual knowledge, no default by either party exists, other than those defaults stated in such certificate. Any such certificate may be relied upon by the requesting party and (i) if Landlord is the requesting party, by any current or prospective purchaser or mortgagee, and (ii) if Tenant is the requesting party, by any prospective sub-tenant or assignee.

18.2 Non-Disturbance Agreement. Landlord shall provide Tenant with a non-disturbance agreement reasonably acceptable to Tenant, which may be included as part of a subordination, non-disturbance, and attornment agreement (a "Non-Disturbance Agreement") executed by all future holders of any mortgages or deeds of trust on the Premises or any ground lessors of the Premises (each, a "Holder"). The entry into a satisfactory Non-Disturbance Agreement with any future Holder shall be a condition precedent to the subordination of this Lease to any future mortgage, deed of trust, or ground lease executed by Lessor and Tenant's obligation to attorn to any future Holder. No subordination of this Lease shall operate to modify the terms of this Lease with respect to the rights of the parties to any condemnation award or insurance proceeds.

18.3 Entry By Landlord. Landlord or Landlord's agents shall have the right to enter the Premises upon reasonable notice and during Tenant's non-business hours, accompanied by Tenant's representative, to inspect the Premises. In the event of an emergency, Landlord or Landlord's agents shall have the right to enter the Premises without notice and at any time, without being accompanied by Tenant's representative. Landlord agrees to take all reasonable steps to minimize any interference with Tenant's business operations as a result of such entry.

18.4 Construction and Capitalized Terms. As used in this Lease, the singular shall include the plural and any gender shall include all genders as the context requires. All capitalized terms used in this Lease shall have the meanings set forth in this Lease.

18.5 Integration. This Lease and all documents executed by Landlord and Tenant contemporaneously or in connection herewith constitute the entire agreement between the parties hereto with respect to the matters set forth in this Lease and supersede all prior understandings and agreements, whether written or oral, between the parties hereto relating to the Premises and the transactions provided for in this Lease. Landlord and Tenant are business entities having substantial experience with the subject matter of this Lease and each have fully participated in the negotiation and drafting of this Lease. Accordingly, this Lease shall be construed without regard to the rule providing that ambiguities in a document are to be construed against the drafter.

18.6 Brokers. Each of Landlord and Tenant represents and warrants to the other that no brokers have been involved with this Lease or are entitled to a fee or commission in connection with this Lease. Each party shall indemnify, defend, and hold harmless the other party from and against all claims for broker's commissions or finder's fees by any person claiming to have been retained by the indemnifying party in connection with this transaction.

18.7 Notices. All notices, requests and demands to be given hereunder shall be in writing, sent by (a) certified mail, return receipt requested, postage pre-paid; or (b) recognized overnight courier service guaranteeing next day delivery to Landlord and/or Tenant at the address set forth below; or such other address as such party may designate by written notice given in advance. Notices sent in compliance with this paragraph shall be deemed to be delivered: (i) five days after deposit in the United States Post Office; or (ii) one day after deposit with an overnight courier.

If to Landlord: City of Fort Pierce
 100 N US Highway 1
 Fort Pierce, Florida 34950
 Attn: City Attorney

If to Tenant: Winking Starfish, LLC
 11201 Corporate Cir N, Suite 100
 St. Petersburg, FL 33716
 Attention: Gregory Powers

Any party hereto may change its notice address upon written notice to the other party hereto in accordance with this paragraph. Notices by the parties may be given on their behalf by their respective counsel.

18.8 Force Majeure. In the event that either party is delayed or hindered in, or prevented from, the performance of any obligations in this Lease (other than the payment of monies) by reason of strikes, lockouts, labor troubles, failure of power or other utility interruptions, riots, insurrection, war, acts of God, permitting, approval, or other governmental delays, or any other reason of like or unlike nature beyond the reasonable control of the party delayed in performing work or doing acts ("Force Majeure"), such party shall be excused for the period of time equivalent to the delay caused by such Force Majeure.

18.9 Quiet Enjoyment. Landlord covenants that, during the Term and so long as no Event of Default (as defined in Section 17.1) by Tenant exists, Tenant shall have quiet and peaceful possession of the Premises.

18.10 Survival. All obligations of any party hereto not fulfilled at the expiration or earlier termination of this Lease shall survive such expiration or earlier termination as continuing obligations of such party.

18.11 Binding Effect. This Lease shall inure to the benefit of and be binding upon each of the parties hereto and their heirs, legal representatives, successors and assigns.

18.12 Modifications. No modification, waiver or amendment of this Lease or any provisions of this Lease shall be binding upon any party to this Lease unless in writing and signed by such party.

18.13 No Waiver. No waiver of any provision of this Lease shall be implied by any failure of either party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeated subsequently. No express waiver shall affect any provision other than the one specified in such waiver, and then only for the time and in the manner specifically stated.

18.14 Captions. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect, or alter the meaning of such Articles and Sections.

18.15 Severability. If any provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and the invalid or unenforceable provision shall be reformed, to the extent possible, in a manner that most closely gives effect to the intent of the parties, consistent with applicable Legal Requirements.

18.16 Jury Trial. Landlord and Tenant waive trial by jury in any action, proceeding or counterclaim brought by Landlord or Tenant against the other with respect to any matter arising out of or in connection with this Lease and/or Tenant's use and occupancy of the Premises.

18.17 Only Landlord/Tenant Relationship. Landlord and Tenant agree that neither any provision of this Lease nor any act of the parties shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

18.18 Attorney's Fees. If on account of any breach or default by any party hereto in its obligations to any other party hereto, it shall become necessary for the non-defaulting party to employ an attorney to enforce or defend any of its rights or remedies hereunder, each respective party shall be responsible for their own attorney's fees, whether or not suit is instituted in connection therewith. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

18.19 Counterparts; Electronic Signatures. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. Signatures given by facsimile or portable document format (PDF) shall

be binding and effective to the same extent as original signatures.

18.20 Governing Law. This Lease shall be construed, governed and enforced in accordance with the laws of the state of Florida.

18.21 Recording. Upon request of either party, Landlord and Tenant shall execute a memorandum or short form of this Lease, have it properly acknowledged for the purpose of recording, and record such instrument in the proper office in St. Lucie County, Florida. Upon request by Landlord or Tenant, in connection with any future modification of this Lease, the parties agree to execute and cause to be recorded a modification of memorandum or short form lease, in a commercially reasonable form, setting forth such modified terms. The cost of recording shall be borne by the requesting party.

18.22 Consent. Wherever this Lease calls for Landlord or Tenant consent, approval or discretionary action, neither Landlord nor Tenant shall unreasonably withhold, condition, delay, or exercise such consent, approval or discretionary action, except as otherwise expressly provided in this Lease.

18.23 Exhibits. Any exhibits attached to this Lease constitute a part of this Lease and are incorporated into this Lease by this reference.

18.24 Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a structure in sufficient quantities, may present health risks to persons who are exposed to it. Levels of radon that exceed federal and state guidelines have been found in buildings in the State of Florida. Additional information regarding radon and radon testing may be obtainable from the county public health unit.

[SIGNATURE PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have signed, sealed, and delivered this

Lease as of the day and year first above written.

WITNESS AS TO LANDLORD:

LANDLORD:

ATTEST:

CITY OF FORT PIERCE

By: _____
Linda W. Cox, City Clerk

By: _____
Linda Hudson, Mayor

Date: _____

APPROVED AS TO FORM

AND CORRECTNESS:

By: _____
Ben Bryan, Jr., Interim City Attorney

WITNESSESS AS TO TENANT:

TENANT:

WINKING STARFISH, LLC

By: _____
Greg Powers, President

Date: _____

EXHIBITS

1.1 Exhibit A – Demised Premises

4.1 Exhibit B – Base Rent Calculations