

COMMERCIAL LEASE AGREEMENT

BY AND BETWEEN

CRESCENT CITY HARBOR DISTRICT

A Political Subdivision of the State of California

“DISTRICT”

AND

Nickie Ray Williams

And

Denise Marie Williams

D.B.A. “Nick’s Place

“TENANT”

Leased Premises:

160 Anchor Way

at

Crescent City Harbor

Del Norte County, CA

COMMERCIAL LEASE AGREEMENT
160 Anchor Way

This Lease Agreement (“Lease”) is made and entered into by and between the Crescent City Harbor District, a California special district ("District"), and Nickie Ray Williams and Denise Marie Williams, d.b.a Nick’s Place, ("Tenant") for the premises located at 160 Anchor Way, Crescent City, California.

RECITALS

- A. This Lease is expressly conditioned upon the approval of the Crescent City Harbor District, Board of Harbor Commissioners.
- B. District is the trustee of that certain parcel of real property known as 160 Anchor Way situated in the County of Del Norte, State of California, and more particularly described as Assessor’s Parcel Number 117-020-16 (the “Property”), a portion of which is the subject of this Lease.
- C. Tenant desires to lease from District the commercial building and a portion of the surrounding real property for the purpose of operating a crab stand pursuant to the provisions stated in this Lease and District is willing to lease the same to Tenant. Tenant will be leasing that portion of the Property identified in Exhibit A (the “Premises”).

NOW, THEREFORE, in consideration of the mutual obligations, agreements, representations, and warranties herein contained, the parties do hereby agree as follows:

ARTICLE 1: TERM OF LEASE

- 1.01. Term.** This Lease is a month-to-month lease commencing on December 1, 2018.

ARTICLE 2: RENT

- 2.01. Rent.** The Monthly Rent will be either the Minimum Rent or the Percentage Rent, whichever is greater. The Minimum Rent is \$350.00 per month. The Percentage Rent is 6% of gross sales. The term “gross sales” includes the sale price of all goods and products sold on or from the Premises by Tenant, whether for cash or credit, on-site or by mail order, telephone order, facsimile order or by other electronic means, whether payment is actually made or not, whether or not delivery of the items sold is made from the Premises, and the charges made by Tenant for the rendition of services of any nature or kind, whether for cash or credit, whether payment is actually made or not.

2.02. Payment of Rent. The Minimum Rent is payable in advance on or before the 5th day of each month. The Percentage Rent, if greater than the Minimum Rent, is payable on or before the 5th day of the following month. Tenant will receive a credit toward the Percentage Rent in the amount of the Minimum Rent so that the total rent paid to District for the month is equal to the Percentage Rent. Payments must be delivered to the office of District at 101 Citizens Dock Road, Crescent City, California. Rent received after the 5th day of the month is subject to a late charge of 10% of the rent then due.

ARTICLE 3: USE OF PREMISES

3.01. Permitted Use. During the term of this Lease, the Premises may be used for the following exclusive purposes: cooking crab, selling crab, filleting fish, and selling fish. Tenant must not use or permit the Premises to be used for any other purpose, without the prior written consent of District. The building is not intended for use by the public.

3.02. Insurance Hazards. Tenant must not commit or permit the commission of any acts on the Premises or use or permit the use of the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. Tenant must, at its own cost and expense, comply with any and all requirements of District's insurance carriers necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Premises and the improvements on the Premises.

3.03. Waste or Nuisance. Tenant will not commit or permit the commission by others of any waste on the Premises. Tenant will not maintain, commit, or permit the maintenance or commission of any nuisance, as defined in Civil Code Section 3479 or in Del Norte County Ordinances, on the Premises. Tenant must not use or permit the use of the Premises for any unlawful purpose.

3.04. Compliance with Laws. Tenant must, at Tenant's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, relating to Tenant's specific use and occupancy of the Premises, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted.

ARTICLE 4: TAXES AND UTILITIES

4.01. Utilities. Tenant will pay, and hold District and the property of District free and harmless from, all charges for the furnishing of gas, water, sewer, electricity, telephone service, cable service, garbage pickup and disposal, and other public utilities to the

Premises during the term of this Lease. All such charges must be paid by Tenant directly to the provider of the service and must be paid as they become due and payable and in any event before delinquency. Failure of the Tenant to provide for garbage pickup and disposal will be considered a breach of this Lease and will be handled in accordance with the provisions of Article 10 of this Lease.

4.02. Personal Property Taxes. Tenant must pay before they become delinquent any taxes, assessments, and other charges levied or imposed by any governmental entity on the personal property used by Tenant such as furniture, trade fixtures, appliances, and other personal property placed by Tenant in, on, or about the Premises.

4.03. Real Property Taxes. All real property taxes and assessments levied or assessed against the Premises by any governmental entity, including taxes on Tenant's possessory interest (i.e., property taxes based on Tenant's leasehold interest in publicly-owned property), and any special assessments imposed on or against the Premises for the construction or improvement of public works in, on, or about the Premises, must be paid, before they become delinquent, by Tenant.

ARTICLE 5: ALTERATIONS AND REPAIRS

5.01. Condition of Premises. Tenant accepts the Premises, as well as the improvements located on the Premises, in their present condition and stipulates with District that the Premises and improvements are in good, clean, safe, and tenantable condition as of the date of this Lease. Tenant further agrees with and represents to District that the Premises have been inspected by Tenant, that Tenant has received assurances acceptable to Tenant by means independent of District or any agent of District of the truth of all facts material to this Lease, and that the Premises are being leased by Tenant as a result of Tenant's own inspection and investigation and not as a result of any representations made by District or any agent of District except those expressly set forth in this Lease.

5.02. Maintenance by District. (a) District must, at its own cost and expense, maintain in good condition and repair the structural elements of the Building. For purposes of this section, "structural elements" means the exterior roof, exterior walls (except show-window glass), structural supports, and foundation of the Building. District is not liable for any damages to Tenant or the property of Tenant resulting from District's failure to make any repairs required by this section unless written notice of the need for those repairs has been given to District by Tenant and District has failed to make the needed repairs within 30 days after receipt of the notice, unless prevented by causes not the fault of the District. Notwithstanding anything in this Section to the contrary, Tenant must promptly reimburse District for the full cost of any repairs made pursuant to this

Section required because of the negligence or other fault, other than normal and proper use, of Tenant or its employees or agents or subtenants, if any.

(b) District and its agents have the right to enter the Premises at all reasonable times (and at any time during an emergency) for the purpose of inspecting them or to make any repairs required to be made by District under this Lease.

5.03. Maintenance by Tenant. Except as otherwise expressly provided in Section 5.02 of this Lease, Tenant must at its own cost and expense keep and maintain all portions of the Premises and all improvements located on the Premises in good order and repair and in as safe and clean a condition as they were when received by Tenant from District, reasonable wear and tear excepted. Tenant's obligation to repair specifically includes necessary repairs to the heating, ventilation, and air conditioning systems, interior walls, floor coverings, ceilings, painting and maintenance of exterior walls, the interior and exterior portions of all doors, and landscaping for the Premises.

5.04. Maintenance and Insurance of Plate Glass Windows. Tenant must, at Tenant's own cost and expense, repair and replace any plate glass in any show window on the Premises that is broken, regardless of cause, except by fault of District, or by fault of an employee or agent of District. Furthermore, Tenant must, at Tenant's own cost and expense, at all times during the term of this Lease carry adequate plate glass insurance on the glass in all show windows on the Premises to perform the repair and replacement requirements of this section. If Tenant fails to repair or replace any glass broken in a show window or fails to maintain adequate plate glass insurance on the glass in show windows on the Premises, District may replace or repair the broken glass or secure that insurance and Tenant must promptly reimburse District for the cost of the repair, replacement, or insurance.

5.05. Alterations and Liens. Tenant must not make or permit any other person to make any alterations to the Premises or to any improvements on the Premises without the prior written consent of District. District must not unreasonably withhold this consent. Tenant must keep the Premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Premises at the instance or request of Tenant. Furthermore, any and all alterations, additions, improvements, and fixtures, except furniture and trade fixtures, made or placed in or on the Premises by Tenant or any other person, on expiration or earlier termination of this Lease, become the property of District and remain on the Premises. District has the option, however, on expiration or termination of this Lease, of requiring Tenant, at Tenant's sole cost and expense, to remove any or all such alterations, additions, improvements, or fixtures from the Premises.

5.06. Inspection by District. Tenant must permit District or District's agents, representatives, or employees to enter the Premises at all reasonable times for the purpose

of inspecting the Premises to determine whether Tenant is complying with the terms of this Lease, for the purpose of doing other lawful acts that may be necessary to protect District's interest in the Premises, or for the purpose of performing District's duties under this Lease.

5.07. Surrender of Premises. Upon the termination of this Lease, Tenant must promptly surrender and deliver the Premises to District in as good condition as they are now at the date of this Lease, excluding reasonable wear and tear, and any repairs required under this Lease to be made by District.

ARTICLE 6: INDEMNITY, RELEASE, INSURANCE, AND WAIVER OF SUBROGATION.

6.01. Indemnity. Tenant must defend, indemnify and hold harmless the District, its boards, commissions, officers, elected and appointed officials (including Board members), employees, contractors, consultants, volunteers, and agents (collectively, the "Indemnified Parties") from and against all liabilities, losses, judgments, lawsuits, causes of action, obligations, debts, demands, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees (collectively referred to as "Claim"), which may be imposed or incurred or asserted (whether real or claimed) against District or the Indemnified Parties by reason of any of the following occurrences during the term of this Lease:

- (a) Any use, non-use, possession, occupation, condition, operation, conduct of business, maintenance or management of the Premises by Tenant or any of Tenant's employees, agents, subcontractors, or invitees ("Tenant's Parties") or arising from any activity, work, or other things done, permitted or suffered by Tenant or any of Tenant's Parties in or about the Premises, or any part thereof, or any sidewalk, curb, passageway or space adjacent thereto over which Tenant has management responsibilities or control;
- (b) Any negligence or wrongful act on the part of Tenant or any of Tenant's Parties;
- (c) Any accident, injury or damage to any person or property occurring in, on or about the Premises, or any part thereof, or any sidewalk, curb, vault, passageway or space adjacent thereto over which Tenant has management responsibilities or control;
- (d) Any failure on the part of Tenant to maintain, repair, restore or construct the Premises as provided in this Lease, or any failure to perform or comply with any of the other terms, provisions, covenants and conditions contained in this lease on its part to be performed or complied with; and

- (e) All liens, claims and demands arising out of the construction, alteration, repair, restoration or work of improvement on or about the Premises by or on behalf of Tenant.

Tenant agrees to give prompt notice to District in case of casualty or accidents in or on the Premises, or in the case of any incident or omission upon which a Claim could be made. In case any action or proceeding is brought against District or any of the other Indemnified Parties by reason of any such Claim, Tenant, upon written notice from District, must at Tenant's expense, resist or defend such action or proceeding by counsel reasonably approved by District in writing. This obligation to indemnify includes without limitation reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities from the first notice that any Claim or demand is to be made or may be made. Notwithstanding the foregoing, neither District nor the other Indemnified Parties are entitled to indemnity under the foregoing provision for any Claim to the extent arising from District's own negligence or willful misconduct.

6.02. Release. District or its agents will not be liable for interference with light, air, nor for any latent defect in the Premises. District is not liable for, and Tenant on behalf of itself and, to the maximum extent permitted by Law, Tenant's Parties, hereby releases District from any loss, damage or liability of any kind, for any injury to or death of persons, for Environmental Damages or for damage to property of Tenant or any other person from any cause whatsoever occurring from and after the lease Commencement Date by reason of the use, construction, occupancy and enjoyment of the Premises by Tenant or any of Tenant's Parties, or for any matter for which Tenant is obligated to indemnify District under this Lease. The damages for which District is released include, but are not limited to, damages resulting from: (i) any labor dispute; (ii) fire, smoke, explosion, noxious odors, the presence of Hazardous Materials, falling plaster or other building materials, steam, gas, electricity, or other nuisance; (iii) water, dampness, wave action including tsunami or rain which may leak from or to any part of the Premises or its roof; (iv) failure or rupture of the pipes, appliances, Systems, equipment or plumbing works in the Premises; and (v) interruption in utility service. District is in no event liable to Tenant or anyone claiming by, under or through Tenant for any loss, damage or liability resulting from the acts or omissions of other tenants or users of the Crescent City Harbor or by any other third person who was not acting under the direction and control of District.

6.03. Insurance Provided by Tenant. Immediately upon execution of this Lease, Tenant must carry and maintain, at Tenant's sole cost and expense, the types of insurance, in the amounts specified and in the forms provided below.

- (a) Comprehensive General Liability.

Commercial general liability "occurrence" coverage covering the Premises and Tenant's use thereof in the minimum amount of One Million Dollars

(\$100,000.00) combined single limit (“CSL”) bodily injury & property damage each occurrence and One Million Dollars (\$100,000.00) CSL product and general aggregate, including personal injury, broad form property damage, products / completed operations, broad form blanket contractual, One Hundred Thousand Dollars (\$100,000.00) fire legal liability, broad form CGL endorsement. These limits shall apply to this location only. The insurance coverage required under this Section shall include coverage for liability hazards as defined in the policy forms and endorsements for premises and operations liability, personal injury liability, broad form property damage liability and contractual liability, which shall extend to liability of Tenant arising out of the indemnities provided above.

(b) Direct Property Damage.

All-risk physical damage insurance, including debris removal, covering the Premises, equipment, Tenant’s trade fixtures, merchandise and personal property from time to time in, on or about the Premises, all improvements, and any heating and cooling facilities serving the Premises which may be located outside the Premises. Such insurance (i) shall be written on a replacement cost basis in an amount equal to at least ninety percent (90%) of the replacement cost of the insured property; and (ii) shall provide protection against perils that are covered under standard insurance industry practices and, if obtainable at commercially reasonable rates and with commercially reasonable deductibles and other terms, earthquake and other natural disaster insurance coverage. Tenant’s obligations to provide insurance pursuant to this Section applies to all improvements, equipment and fixtures, notwithstanding that some or all of such improvements, equipment and fixtures may have been installed by Tenant, District, a prior tenant or any other party at any time before or after the delivery of the Premises to Tenant.

(c) Workers Compensation.

Workers’ compensation coverage under policies from insurance companies authorized to issue such insurance under California Labor Code section 3700 or other such applicable law (unless exempted therefrom as a self-insurer) for all employees of Tenant. The Worker’s Compensation policy must provide a waiver of subrogation in favor of the District.

(d) Motor Vehicle Liability.

Personal automobile liability coverage, in the minimum amounts of Five Hundred Thousand Dollars (\$100,000.00) per person and Five Hundred Thousand Dollars (\$100,000.00) each accident bodily injury, and One Hundred Thousand Dollars (\$100,000.00) each accident property damage for each vehicle to be operated in association with the business of Tenant.

(e) Policy Form. All policies of insurance provided for herein shall be issued by insurance companies with “Best’s Insurance Reports” most current rating of not less than B+VII, which are qualified to do business in California. No such policy of insurance shall provide for a deductible in excess of \$1,000.00 per loss.

6.04. Insurance Certificates.

- (a) Tenant will provide District with the following insurance documents prior to occupying the Premises:
- i. Certificates of insurance for all required coverage – each certificate shall indicate specifically the form on which the policy is written and the policy deductible.
 - ii. Mandatory endorsements for each policy:
 - Crescent City Harbor District as additional insured.
 - Waiver of subrogation endorsement (A.K.A.: “Waiver of Transfer Rights of Recovery Against Others”, “Waiver of Our Right to Recover from Others”).
 - 30-day notice cancellation clause endorsement.
- (b) No limitation of Liability. Insurance coverage in the minimum amounts set forth herein do not relieve Tenant for liability in excess of such coverage, nor does it preclude District from taking such other actions as are available to it under any other provisions of this lease or otherwise at law or in equity.

6.05. Hazardous Materials. Tenant covenants that no Hazardous Materials will be brought onto, stored, used, transported or disposed of at the Premises by Tenant or any of Tenant’s Parties, except in strict compliance with all applicable laws controlling the presence and use of such materials.

ARTICLE 7: SIGNS AND TRADE FIXTURES

7.01. Installation and Removal of Trade Fixtures. Subject to any design guidelines for exterior treatment of the improvements now in effect or subsequently adopted by District, Tenant has the right at any time and from time to time during the term of this Lease, at Tenant's sole cost and expense, to install and affix in, to, or on the Premises any items, herein called "trade fixtures," for use in Tenant's trade or business that Tenant may, in Tenant's sole discretion, deem advisable. Any and all trade fixtures that can be removed without structural damage to the Premises or any building or improvements on

the Premises will, subject to Section 7.02 of this Lease, remain the property of the Tenant and may be removed by Tenant at any time before the expiration or earlier termination of this Lease, provided Tenant repairs any damage caused by the removal.

7.02. Unremoved Trade Fixtures. Any trade fixtures described in this Article that are not removed from the Premises by Tenant within 15 days after the termination, regardless of cause, of this Lease will be deemed abandoned by Tenant and automatically become the property of District as owner of the real property to which they are affixed.

7.03. Signs. Tenant may erect, maintain, permit, and from time to time remove any signs in or about the Premises that Tenant may deem necessary or desirable, provided that any signs erected or maintained by Tenant comply with all requirements of any governmental authority, including the District with jurisdiction over the Premises.

ARTICLE 8: DESTRUCTION OF PREMISES

8.01. District's Obligation to Repair. Due to the anticipated short term of this Lease, if at any time during this Lease, the building on the Premises is damaged or destroyed by any cause, the District has no obligation to repair, rebuild, or restore the Building.

8.02. Abatement of Rent. If damage or destruction to the Premises renders the operation of Tenant's business impossible and Tenant in fact ceases to operate its business at the Premises, Tenant's rent obligation ceases from the date of such damage or destruction.

ARTICLE 9: CONDEMNATION

9.01. Total Condemnation. If at any time during the term of this Lease, title and possession of all of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity including District, this Lease will terminate as of 12:01 A.M. on the date actual physical possession of the Premises is taken by the agency or entity exercising the power of eminent domain, and both District and Tenant will thereafter be released from all obligations under this Lease, except those described in Section 9.02.

9.02. Condemnation Award. If at any time during the term of this Lease, title and possession of all or any portion of the Premises is taken under the power of eminent domain by any third-party public or quasi-public agency or entity, the compensation or damages for the taking will be awarded to and be the sole property of District. Tenant hereby waives any and all rights to share in any damages or award.

ARTICLE 10: ASSIGNMENT, DEFAULT, AND TERMINATION

10.01. Restriction Against Subletting or Assignment. Tenant will not encumber, assign, sublet, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises or any part thereof without first obtaining the express written consent of District, which may be granted or withheld in the District's discretion.

10.02. Default Defined. The occurrence of any of the following is a material default and breach of this Lease by Tenant:

- (a) Any failure by Tenant to pay the Monthly Rent or to make any other payment required to be made by Tenant under this Lease.
- (b) The abandonment or vacation of the Premises by Tenant (the absence of Tenant from or the failure by Tenant to conduct business on the Premises for a period in excess of fifteen (15) consecutive days in the absence of the express consent of District will constitute an abandonment or vacation of the Premises for purposes of this Lease).
- (c) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, when that failure continues for ten (10) days after written notice of Tenant's failure is given by District to Tenant; provided, however, that if the nature of that default is such that it cannot reasonably be cured within a 10-day period, Tenant will not be deemed to be in default if Tenant commences that cure within the 10-day period and thereafter diligently prosecutes it to completion.

The District will provide notice of (a) through (c) of this Section 10.02 in the manner required of statutory notices for unlawful detainer proceedings under Code of Civil Procedure Section 1161 et seq.

10.03. Termination of Lease and Recovery of Damages. In the event of any default by Tenant under this Lease, in addition to any other remedies available to District at law or in equity, District will have the right to terminate this Lease and all rights of Tenant hereunder by giving written notice of the termination. No act of District may be construed as terminating this Lease except written notice given by District to Tenant advising Tenant that District elects to terminate the Lease.

10.04. District's Right to Cure Tenant Defaults. If, after receipt of the required notice as provided for in Section 10.02, Tenant breaches or fails to perform any of the

covenants or provisions of this Lease, District may, but is not be required to, cure Tenant's breach. Any sum expended by District, with the rate of interest specified in the District's then-current schedule of fees and charges must be reimbursed by Tenant to District with the next rent payment due under this Lease.

10.05. Termination. Either Tenant or District may terminate this Lease at any time and for any reason by giving 30 days' advance written notice.

10.06. Cumulative Remedies. The remedies granted to District in this Article are not exclusive but are cumulative and in addition to all remedies now or hereafter allowed by law or provided in this Lease.

10.07. Waiver of Breach. The waiver by District of any breach by Tenant of any of the provisions of this Lease does not and will not constitute a continuing waiver or a waiver of any subsequent breach by Tenant either of the same or another provision of this Lease.

ARTICLE 11: MISCELLANEOUS

11.01. Force Majeure--Unavoidable Delays. If the performance of any act required by this Lease to be performed by either District or Tenant is prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability that is not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. However, nothing contained in this section may excuse the prompt payment of rent by Tenant as required by this Lease or the performance of any act rendered difficult solely because of the financial condition of the party required to perform the act.

11.02. Attorneys' Fees. If any litigation is commenced between the parties to this Lease concerning the Premises, this Lease, or the rights and duties of either in relation to the Premises or to this Lease, the party prevailing in that litigation will be entitled to, in addition to any other relief that may be granted in the litigation, a reasonable sum as and for its attorneys' fees in that litigation that are determined by the court in that litigation or in a separate action brought for that purpose.

11.03. Notices. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party to this Lease must be in writing and deemed duly served and given when personally delivered to the party to whom they are directed, or in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to **Tenant at 233 Lauff Avenue, Crescent City,**

California 95531, or to District at 101 Citizens Dock Road, Crescent City, California 95531. Either party, Tenant or District, may change its address for the purpose of this section by giving written notice of that change to the other party in the manner provided in this section.

11.04. Binding on Heirs and Successors. This Lease will be binding on and will inure to the benefit of the heirs, executors, administrators, successors, and assigns of District and Tenant, but nothing in this section may be construed as consent by District to any assignment of this Lease or any interest therein by Tenant except as provided in Section 10.01 of this Lease.

11.05. Partial Invalidity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Lease will remain in full force and effect unimpaired by the holding.

11.06. Sole and Only Agreement. This instrument constitutes the sole and only full, final, and complete agreement between District and Tenant respecting the Premises, the leasing of the Premises to Tenant, or the lease term created under this Lease, and correctly sets forth the obligations of District and Tenant to each other as of its date. Any agreements or representations respecting the Premises or their leasing by District to Tenant not expressly set forth in this instrument are null and void. This Lease may not be extended, amended, modified, altered, or changed, except in a writing signed by District and Tenant.

Executed on _____, 2018 at Crescent City, California.

DISTRICT

TENANT

By: _____, President
Crescent City Harbor District
Board of Harbor Commissioners

Nickie Ray Williams

ATTEST:

Denise Marie Williams

, Secretary
Crescent City Harbor District

Board of Harbor Commissioners

APPROVED AS TO FORM:

Autumn E. Luna, General Counsel
Crescent City Harbor District