

Pops

## PARKING LOT LEASE AGREEMENT

**THIS PARKING LOT LEASE AGREEMENT** (this "Lease") is made as of August 1, 2022, by and between GULF HARBOR MARINA CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, with an address 100 Circuit Road, Nokomis, Florida 34275 (the "Landlord"), and DRIFTAGE, LLC d/b/a POP'S SUNSET GRILL, with an address of 112 Circuit Road, Nokomis, Florida 34275 (the "Tenant"). The Landlord and the Tenant shall also be referred to herein each as a "Party", and collectively as the "Parties".

### RECITALS

**WHEREAS**, the Landlord has agreed to lease to the Tenant exclusively and the Tenant has agreed to lease from the Landlord the Leased Premises, to be used generally as a parking lot, on the terms and conditions herein contained.

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

**1. Description of Demised Premises.** The Landlord hereby demises and lets to the Tenant, and the Tenant hereby takes and leases from the Landlord, for the term or terms and upon the provisions hereinafter specified, the following described property (collectively, the "Leased Premises"): (a) the real property described on Exhibit A of this Lease, attached hereto and made a part hereof, together with all easements, rights and appurtenances thereunto belonging or pertaining (collectively, the "Land"), and (b) all improvements now constructed on the Land, if any.

**2. Term.** The Tenant is hereby leasing the Leased Premises for the initial term commencing on August 1, 2022 (the "Effective Date") and terminating on July 31, 2027 – 5 Years from Effective Date) (the "Initial Term"). Subject to the following notice requirements, and provided that at the time of such notice the Tenant is not then in Default (as herein defined) under the terms of this Lease, the Tenant is hereby granted the right (each, a "Renewal Option") to renew the Initial Term of this Lease for a (5) year term (each, a "Renewal Term"). Such Renewal Option shall be exercised by the Tenant not less than sixty (60) days prior to the expiration of the Initial Term or, if applicable, sixty (60) days prior to the expiration of any Renewal Term of this Lease. Tenant shall provide written notice of its intent to exercise its Renewal Option in accordance with the notice provisions contained in Paragraph 16 of this Lease. All of the terms and provisions of this Lease shall apply to each Renewal Term. In the event the Tenant exercises a Renewal Option, no further amendment or other signed writing is necessary to effectuate such Renewal Option.

**3. Rent; Taxes; Assessments.** During the first year of this Lease, the Tenant shall make rent payments to the Landlord in the amount of One Thousand Five Hundred Dollars (\$1,500.00) (payable in US Dollars only) due and payable in full on the first day of each month. The monthly rent for each year beginning on August 1, 2023 shall increase over the previous base monthly rent for the previously year by one hundred three percent (102%) so that the new rental payment shall be \$1,530.00 starting on August 1, 2023, and the new rental payment shall be \$1,560.60 starting on August 1, 2024, and so on. All sums due and owing by Tenant pursuant to this Section Three of this Lease are considered "Rent" for the purposes of this Lease as well as any other fees, taxes, charges, or other payments identified as "Rent" in this Lease. The Tenant shall make

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each Rent payment to the Landlord at the Landlord's address set forth above, or at such other place or to such other persons or entities as the Landlord from time to time may designate to the Tenant in writing. During the term of this Lease, the Tenant shall pay annually at the Landlord's option either to the Landlord or directly to the taxing authority, as additional Rent for each tax year during the term of this Lease, any and all real estate taxes levied upon the Leased Premises, and a pro rata part of same for any part of a tax year included within said term as Rent. Tenant agrees to pay to Landlord, as Rent hereunder, payable in consecutive annually installments, together with any tax imposed by the State of Florida or Sarasota County on rentals, the following sums all of which shall also be included as Rent. Tenant shall be responsible for the payment of all insurance, utilities, repairs, including those necessary to bring the Tenant's rented portion of the Lease Premises into compliance with all governmental regulations including the Clean Air Act and the Americans with Disabilities Act, maintenance, replacement, sales and use taxes, property taxes, taxes and charges and impositions relative to the Premises and/or Tenant's use and occupancy thereof.

In addition to the obligations as specified above, the Tenant shall pay and discharge promptly when the same shall become due, as additional Rent, all expenses of ownership and operation of the Leased Premises other than expenses that would not be incurred if the Tenant rather than the Landlord owned the Leased Premises, together with all other amounts and obligations which the Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added lawfully by any such third party payee or collecting authority for nonpayment or late payment thereof.

**4. Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the rental herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease or available at law or in equity.

**5. No Service Provided; Repairs, Maintenance and Alterations.** The Parties understand and agree that this Lease is a land lease and that the Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Leased Premises. The Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement and maintenance of the Leased Premises. The Tenant shall maintain the Leased Premises in substantially the same condition of repair and appearance existing at the Effective Date. The Tenant shall keep the Leased Premises clear of water and debris, as required. The Tenant shall not make any alterations, additions, or improvements to the Leased Premises without the prior written approval of the Landlord. Tenant shall be responsible for routine maintenance of the Leased Premises during the term of the lease, including the daily removal of trash, sweeping, and cleaning and shall maintain any alterations, additions, or improvements. Repairs of any existing improvements shall be the responsibility of the Tenant. Upon expiration of this Lease, the Landlord, in its sole discretion, may require the Tenant to remove any alterations, additions, or improvements to the Leased Premises at Tenant's sole expense.

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Page 2 of 9

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The interest of Landlord in the Leased Premises shall not be subject in any way to any liens including construction liens, for improvements to or other work performed with respect to the Leased Premises by or on behalf of Tenant, including without limitation the Tenant improvements, if any. The Tenant shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion, or other estate of Landlord in the Leased Premises and all mechanics, materialmen, contractors, artisans, and other parties contracting with Tenant or its representatives or privies with respect to the Leased Premises or any part of the Leased Premises are hereby charged with notice that they must look to the Tenant to secure payment of any bill for work done or material furnished or for any other purpose during the term of this Lease. Without limiting the generality of the foregoing, Tenant agrees to obtain and deliver to Landlord written and unconditional waivers of construction liens upon Landlord's interest in the Leased Premises, for all work or materials to be furnished to the Leased Premises at the request or direction of Tenant signed by all architects, engineers, designers, contractors, subcontractors, materialmen, and laborers who become involved in such work. Notwithstanding the foregoing, Tenant, at its expense, shall cause any lien filed against the Leased Premises, for work or materials claimed to have been furnished to Tenant, to be discharged of record or properly transferred to a bond pursuant to Section 713.24, Florida Statutes, within 10 days after notice thereof to Tenant. If Tenant shall fail to so discharge such lien or transfer it to a bond as required above, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge or transfer the same to a bond. Any amount paid by Landlord for any of the aforesaid purposes, including reasonable attorney's fees (and to the extent permitted by law) shall be paid by Tenant to Landlord on demand as Rent. Landlord shall have the right to post and keep posted on the Premises any notices that may be provided by law or which Landlord may deem to be proper for the protection of Landlord, the Leased Premises and the Building from such liens. Tenant shall notify every contractor making improvements to the Leased Premises that the interest of the Landlord in the Leased Premises shall not be subject to liens for improvements to the Leased Premises or for other work performed with respect to the Leased Premises by or on behalf of Tenant. Upon request from Landlord, Tenant shall execute, acknowledge and deliver without charge a memorandum of lease or notice in recordable form containing a confirmation that the interest of the Landlord in the Premises shall not be subject to liens for improvements to the Leased Premises or for other work performed with respect to the Leased Premises by or on behalf of Tenant.

**6. Performance By Landlord of Tenant's Obligations.** In the event Landlord shall pay or be compelled to pay a sum of money, or to do any act requiring payment of any money, by reason of the failure of Tenant to perform one or more of the covenants herein, to be kept and performed by Tenant, then in such event, the sum or sums so paid by Landlord, together with all interest, expense or obligations incurred by Landlord, shall be considered as additional Rent and shall be added to the Rent becoming due for the next month and shall be collectible in the same manner and with the same remedies as if they had been rents originally reserved. Landlord agrees not to pay any sum of money or to do any act which requires payment of any sum of money for which under the provisions of this paragraph it would be entitled to be reimbursed by Tenant, unless it shall have given thirty (30) days written notice of its intention so to do and Tenant shall have

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Page 3 of 9

Tenant's Authorized Agent

failed during such period to make such payment as shall be payable hereunder, or to do such act or acts which under the terms of this Lease it is required to do.

**7. Use.** The Tenant's use of the Leased Premises shall be for the temporary parking of motor vehicles used by Tenant's customers, agents, employees, consultants, affiliates, guests, invitees, third-party assignees and Valet services for the restaurant, sublessors and designees. No trailers shall be parked on the Leased Area. Except for an occasional single trailer in the corner of the lot during off season. Temporary or permanent storage of any items or personal property is prohibited. Landlord shall not lease the land subject to this Lease to any other party; however, Landlord, its unit owners, agents, employees, consultants, affiliates, guests, invitees and third party assignees and designees may also use the land for parking of vehicles.

**8. Compliance with Laws.** Throughout the term of this Lease, the Tenant, at its sole cost and expense, shall comply with any and all laws, regulations and ordinances that are applicable to the Leased Premises or any part thereof. The Tenant shall be required to correct any condition of or on the Leased Premises that existed at the Effective Date and at that time represented a violation of, or noncompliance with, any applicable law, regulation or ordinance by the Landlord.

**9. Indemnity; Insurance.** The Tenant shall indemnify the Landlord (and its officers, directors and employees) against, and hold the Landlord (and its officers, directors and employees) harmless from, any and all losses, damages, claims, liabilities, judgments, costs and expenses (including, but not limited to, the reasonable attorney's fees, court costs, expert witness costs, and expense of defending any claim), arising directly or indirectly during the term of this Lease out of any act, omission, or negligence of the Tenant, its agents, employees, consultants, affiliates, guests, invitees and third party assignees, sublessors and designees.

The Tenant will provide for the Landlord, by insurance or otherwise, reasonable written assurance for the performance by the Tenant of this indemnity and hold harmless agreement. Tenant shall provide to Landlord written evidence of the existence of general liability insurance, that is primary and non-contributory with a waiver of subrogation, with limits of at least One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. Tenant shall provide to Landlord with a Certificate of Insurance evidencing said policy and that the Landlord has been named as an additional insured. The insurance company shall be rated no lower than A- by a rating firm such as A.M. Best or its equivalent latest edition. Said Certificate of Insurance shall provide that the Landlord shall be given thirty (30) days' written notice if the policy is cancelled or changed in any way.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD HEREUNDER) TO TENANT SHALL BE LIMITED TO THE INTEREST OF LANDLORD IN THE PREMISES AND TENANT AGREES TO LOOK SOLELY TO LANDLORD'S INTEREST IN THE PREMISES FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST THE LANDLORD, IF ANY. IT BEING INTENDED THAT NEITHER LANDLORD NOR ANY MEMBER, PRINCIPAL, PARTNER, SHAREHOLDER, OFFICER, DIRECTOR OR BENEFICIARY OF LANDLORD SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY.**

Notwithstanding any other provision(s) contained in this Lease, this Paragraph Nine shall survive termination or expiration of this Lease and shall govern the rights, responsibilities, and obligations of the Parties as to matters contained hereinabove.

**10. Eminent Domain.** If, after the execution of this Lease and prior to the effective date of the expiration or termination of this Lease, the whole of the Leased Premises shall be taken under the power of eminent domain, then the term of this Lease shall cease as of the time when the Landlord shall be divested of its title to the Leased Premises, and Rent and other costs and expenses, if any, shall be apportioned and adjusted as of the effective time of such termination. The Tenant shall not be entitled to participate in any condemnation proceeding on its own behalf, nor shall the Tenant participate in any amounts awarded to the Landlord.

**11. Default.** In the event that the Tenant shall fail to pay Rent or any part thereof when due or shall violate or fail to perform any of the covenants hereof on the part of the Tenant to be performed, in both such circumstances after notice of such failure or violation shall have been given as hereinbelow provided (each such event, a "Default"), the Landlord may elect either:

- a. To re-enter the Leased Premises by summary proceedings or otherwise and re-let the Leased Premises to a third party or parties, making diligent efforts therefor, and upon receiving rent therefrom, applying the same first to the payment of Rent and other fees and expenses accruing hereunder, and the balance, if any, to be paid to the Tenant; provided, however, that the Tenant shall remain liable for the equivalent of the amount of all Rent and other payments due, as the case may be, throughout the remaining term of this Lease to the extent such amounts are not mitigated by such third party lessee or lessees; or
- b. To terminate this Lease and to resume possession of the Leased Premises wholly discharged from this Lease. The Landlord shall make such election by written notice to the Tenant at any time on or before the doing of any act or the commencement of any proceedings to recover possession of the Leased Premises by reason of the Default then existing and such election shall be final. If the Landlord shall elect to terminate this Lease as set forth in this Section 12, then immediately upon such termination, all rights and obligations whatsoever of the Tenant and of its successors and assigns under this Lease, so far as the same may relate to the unexpired portion of the term hereof, shall cease. Within ten (10) days after receipt by the Tenant of notice of election by the Landlord to terminate this Lease pursuant to this Section 12, (i) the Parties shall, by an instrument in writing in form for recording, cancel this Lease and the unexpired portion of the term hereof, and (ii) the Tenant shall surrender and deliver to the Landlord the entire Leased Premises, and upon any default by the Tenant in so doing, the Landlord shall have the right to re-enter the Leased Premises either by summary proceeding or otherwise.

No Default hereunder shall be deemed to have occurred on the part of the Tenant until thirty (30) days after written notice of such Default shall have been received by the Tenant, and the Tenant within such time shall have failed to remedy such Default to the reasonable satisfaction of Landlord. If Tenant cannot cure such Default to the reasonable satisfaction of Landlord within

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the thirty (30) day time period, Landlord, at its sole option, may immediately terminate the Lease or provide Tenant one or more extensions of time to cure the Default.

**12. Termination.** Notwithstanding any other term of this Lease to the contrary, (and in addition to the Parties' other rights herein to terminate this Lease or elect not to exercise any Renewal Options), the Tenant and the Landlord shall each have the right to terminate this Lease for just cause, at any time upon not less than sixty (60) days' written notice to the other party. Upon any such termination, this Lease shall terminate and expire on the date specified in such notice. In the event that the effective date of termination causes this Lease to terminate on a date other than the Payment Date or a subsequent anniversary of the Payment Date, the Tenant shall prorate its final payment of Rent to the Landlord to correspond to such shortened period.

**13. Assignment and Subletting.** The Tenant shall not assign this Lease or sublet the whole or any part of the Leased Premises at any time.

**14. Successors and Assigns.** Except as otherwise set forth in this Lease, the agreements and conditions in this Lease contained on the part of either Party to be performed and observed shall be binding upon said Party and shall inure to the benefit of the other Party.

**15. Force Majeure.** Neither Party will be liable for any failure to perform its obligations pursuant to this Lease, other than payment obligations, from such Party's delay in performance or non-performance under this Lease caused by circumstances beyond such Party's control, including but not limited to acts of God, war, terrorism, riot, fire, explosion, accident, flood, sabotage, strike, lockout, injunctions, catastrophic breakage or failure of machinery or apparatus, national defense requirements or compliance with or change in applicable law. The non-performing Party shall be diligent in attempting to remove any such cause and shall promptly notify the other Party of the extent and probable duration of such cause. However, the Parties stipulate that Force Majeure shall not include the novel coronavirus Covid-19 pandemic, which is ongoing as of the date of the execution of this Agreement.

**16. Notices.** All notices sent or required to be sent hereunder shall be sent in writing by registered or certified mail, return receipt requested, postage prepaid, to the addresses set forth in the caption to this Lease above or to either Party at such other address as such Party may designate by notice to the other Party.

**17. Waiver: Invalidity of Particular Provision.** The failure of a Party to exercise or enforce any of its rights under this Lease shall not be a waiver of those rights and shall not affect any other right of that Party under this Lease. In the event that any provision of this Lease shall be found to be void or unenforceable, such findings shall not be construed to render any other provision of this Lease either void or unenforceable and all other provisions shall remain in full force and effect unless the provisions which are invalid or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either Party.

**18. Construction: Section Headings.** Each term and each provision of this Lease to be performed by the Tenant shall be construed to be both a covenant and a condition. The paragraph headings throughout this Lease are used for convenience only, and shall not be held to explain, modify, amplify or otherwise aid in the interpretation, construction or meaning of this Lease.

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Page 6 of 9

[Signature]  
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**19. No Merger of Title.** There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Leased Premises by reason of the fact that the same person or entity may acquire, hold or own, directly or indirectly, (a) the leasehold estate created by this Lease or any part thereof or interest therein or any interest of the Tenant in this Lease, and (b) the fee estate or ownership of any of the Leased Premises or any interest in such fee estate or ownership; and no such merger shall occur unless and until all persons or entities having any interest in (i) this Lease as the Tenant or the leasehold estate created by this Lease, and (ii) this Lease as the Landlord or the fee estate in or ownership of the Leased Premises or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

**20. Surrender.** The Tenant shall (a) on the last day of the term hereof (including the final Renewal Term, if any), (b) upon any earlier termination permitted under this Lease, and (c) upon any permitted entry or re-entry by the Landlord upon the Leased Premises, peaceably leave and surrender the Leased Premises into the possession and use of the Landlord without fraud or delay in good order, condition and repair without violations, reasonable wear and tear and casualty excepted. If the Tenant has made additions, alterations or modifications to the Leased Premises, at the request of the Landlord, the Tenant shall remove such additions, alterations or modifications, at its expense, upon such surrender.

**21. Subordination of Lease.** This Lease and the term and estate granted herein are and shall be subject and subordinate to the lien of all institutional mortgages, if any, which may now or at any time hereafter affect all or any portion of the Landlord's interest in the Leased Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof.

**22. Entire Agreement.** This Lease and attached exhibits constitute the entire Lease between the parties. No waiver, consent, modification or change of terms of this Lease shall bind either party unless in writing and signed by both parties with the formalities of this Lease. The waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Tenant, by signature of its authorized agent, hereby acknowledges that he/she has read this Agreement/Agreement, understands it, and agrees to be bound by its terms and conditions.

**23. Dispute Resolution.** Any dispute arising out of, in relationship to, or as a direct or indirect result of this Lease between the Landlord and Tenant shall be resolved by a court of competent jurisdiction and the venue for such disputes shall lie only in Sarasota County, Florida. The laws of the State of Florida shall apply to all such disputes as contemplated in this paragraph. If any action or proceeding is commenced to construe or enforce this Agreement or the rights and duties of the parties hereunder, then the party prevailing in that action, and any appeal thereof, shall be entitled to recover its attorneys' fees and costs in that action or proceeding, as well as all costs and fees of any appeal or action to enforce any judgment entered therein.

LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO

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ANY LITIGATION ARISING OUT OF THIS LEASE OR ANY OTHER DISPUTE OR CONTROVERSY BETWEEN LANDLORD AND TENANT.

**24. Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**25. Short Form Lease.** Tenant shall not record this Lease or any memorandum thereof without the express written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. Tenant further agrees, however, to execute, acknowledge and deliver at any time after the date hereof, at the request of Landlord, a memorandum of lease suitable for recording.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date of this Lease.

**LANDLORD:**

**GULF HARBOR MARINA CONDOMINIUM ASSOCIATION, INC.**  
a Florida not-for-profit Corporation

By: Michael Burke  
(Signature)

Michael Burke  
(Print Name)

As Authorized Agent for Landlord

Date: \_\_\_\_\_, 2022

(CORPORATE SEAL)

Wanda F. Skaygs  
Witness #1 for Landlord

WANDA F. SKAYGS  
Print Name (Witness #1)

\_\_\_\_\_  
Witness #2 for Landlord

\_\_\_\_\_  
Print Name (Witness #2)

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**TENANT:**

**DRIFTAGE, LLC, d/b/a, POP'S SUNSET GRILL**  
a Florida Limited Liability Company

By: *[Signature]*  
(Signature)

Joseph Farrell  
(Print Name)

As Authorized Agent for Tenant

Date: 7/22/, 2022

*[Signature]*  
Witness #1 for Tenant

PHIL P SCHALK  
Print Name (Witness #1)

*[Signature]*  
Witness # 2 for Tenant

JOSEPH PLATA  
Print Name (Witness #2)

(CORPORATE SEAL)

**EXHIBIT "A"**

LOTS 1 and 2, Block A, according to the plat of OVERLOOK  
SUBDIVISION, as recorded in Plat Book 9, Page 96, Public  
Records of Sarasota County, Florida  
Parcel ID #: 0169160029

*MB*  
Landlord's Authorized Agent

*[Signature]*  
Tenant's Authorized Agent