

SECOND AMENDMENT TO TENANCY AGREEMENT

1231 Van Ness, Fresno, California 93721

THIS SECOND AMENDMENT TO TENANCY AGREEMENT ("Second Amendment") is effective as of **May 1, 2015**, and amends the Month to Month Tenancy Agreement entered into between the CITY OF FRESNO, a municipal corporation ("LANDLORD"), and KOCKY'S BAR & GRILL, a Delaware Limited Liability Company ("TENANT").

RECITALS

- A. LANDLORD and TENANT entered into a Month to Month Tenancy Agreement, effective March 31, 2011 (the "Lease"), whereby TENANT leased part of the ground floor commercial space of the building located at 1231 Van Ness Avenue, Fresno, CA 93721 (the "Premises").
- B. LANDLORD and TENANT entered into a First Amendment to the Month to Month Tenancy Agreement, effective September 26, 2014, (the "First Amendment"), whereby LANDLORD and TENANT modified the term of the Lease and modified the insurance requirements of the Lease.
- C. Since entering into the Lease and the First Amendment TENANT has been unable to make all payments due under the Lease and desires now to become current on all past due rents.
- D. TENANT also desires certain building improvements to be made to the Premises.
- E. LANDLORD and TENANT now desire to amend the Lease to (1) fix the term of the tenancy to thirty-six (36) months, (2) include a payment plan for TENANT to become current on past due rents while making current rental payments, and (3) provide for the building improvements desired by TENANT, among other things.
- F. Paragraph 32 of the Lease provides that the Lease may be amended or otherwise modified in a writing signed by the parties.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual premises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree that the aforesaid Lease be amended as follows:

1. Section 3 of the Lease titled "Term", as amended by the First Amendment, shall be deleted and replaced with the following:

Term. The Term of this Agreement shall be thirty-six (36) months, commencing on May 1, 2015.

2. Section 4 of the Lease titled "Rent," shall be deleted and replaced with the following:

Rent. Monthly rent in the amount of \$2,270.38 shall be due and payable in monthly installments in advance on the first day of each month, pro-rated for portions thereof on a thirty (30) day month basis. Monthly Rent shall include:

(1) Base Monthly Rent. \$2,000.00

(2) Payment for Past Due Rent. Each month Tenant shall pay one-thirty sixth (1/36th) of the Past Due Rent. Past Due Rent is \$9,734.00. Tenant shall pay \$270.38 each month.

As of March 1, 2015, Tenant has a total past due monthly rent balance of \$15,512.23, inclusive of late fees and interest. Landlord agrees to waive all late fees and interest on the past due monthly rent balance and waives \$4,000.00 (two (2) months' worth of past due rent) of the amount owed.

Tenant acknowledges that Tenant's failure to pay the Rent or any other amount **within three (3)** days of its due date under this Agreement, Tenant will be in default under Section 15.2. Failure of the Tenant to pay Rent as and when due may cause Landlord to incur costs not contemplated by Landlord when entering in to this Agreement, the exact nature and amount of which would be extremely difficult and impracticable to ascertain.

Accordingly, if any Rent, or any other amount due under this Agreement is not received by Landlord as and when due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to 1.5 percent (1.5%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the cost incurred by Landlord as a result of the late payment by Tenant. Acceptance of the late charge by Landlord shall not constitute a waiver of Tenant's default for the overdue amount, nor prevent Landlord from exercising the other rights and remedies granted under this Agreement.

Tenant shall be responsible for payment of the entire Past Due Rent. In the event of default under this Agreement, the unpaid balance of Past Due Rent shall be due and payable to Landlord immediately. Nothing in this Agreement shall constitute a waiver of Landlord's right to recover for Past Due Rent.

Moreover, in the event of default under this Agreement, Tenant shall reimburse Landlord the Cost of Tenant Improvements incurred by Landlord under Section 10.2(a) of this Agreement.

All sums of money due to Landlord under this Agreement, not specifically characterized as rent, shall constitute additional Rent. Nothing contained in this Agreement shall be deemed to suspend or delay the payment of any sum of money at the time it becomes due and payable under this Agreement.

Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed as accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims.

_____ Initials of Tenant

3. Section 10.2 of the Lease titled "Improvements", shall be modified by adding Section 10.2 (a) as follows:

Authorized Tenant Improvements. At the request of Tenant, Landlord authorizes the following Tenant Improvements up to \$10,000.00:

- (1) The replacement of all tinted windows facing Van Ness Avenue with clear glass windows.
- (2) The installation of a new lighted sign on the front of the Premises for marketing purposes, to allow Tenant to display its business name and related basic information as authorized by Landlord.

The improvements shall be completed by Landlord and shall be the property of Landlord only. The parties agree that the Cost of Tenant Improvements shall be borne by Landlord, up to a total of \$10,000.00. Upon installation, Tenant shall be responsible for maintenance of the improvements in accordance with Section 11 of this Agreement.

4. Section 11.3 of the Lease titled "Tenant's Obligations", shall be modified by adding Section 11.3.4 as follows:

Maintenance of Insurance and Business License. Tenant shall remain current on all insurance requirements imposed upon Tenant by this Agreement and under the law. Tenant shall remain current on all City of Fresno Business License Tax filings and payments.

5. Except as otherwise provided herein, the Lease entered into by LANDLORD and TENANT, effective March 1, 2011, as amended by the First Amendment, remains in full force and effect.

6. This First Amendment contains zero (0) exhibits.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this First Amendment at Fresno, California, the day and year first above written.

LANDLORD

TENANT

CITY OF FRESNO, a Municipal Corporation

KOCKY'S BAR & GRILL, a Delaware Limited Liability Company

By: _____
Bruce Rudd, City Manager

By: _____

Name: _____

Title: _____

(if corporation or LLC, Board Chair, Pres., or Vice Pres.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Raj Singh Badhesha, Deputy