

**LEASE AGREEMENT**  
1231 Van Ness Avenue

THIS LEASE AGREEMENT (Agreement) is made and entered into on January 1, 2024, by and between the CITY OF FRESNO, a municipal corporation (Landlord), and **Kocky's Bar and Grill**, (Tenant).

**RECITALS**

A. Landlord owns the building commonly known as 1231 Van Ness, a storefront in the City of Fresno's Parking Garage Structure Number 9, in Fresno, California and more particularly described hereinbelow (the Premises).

B. Tenant is currently on a month-to-month tenancy for the Premises.

C. Landlord and Tenant desire to enter a long-term lease of the Premises under the terms set forth herein. This Agreement will replace, terminate, and supersede the previous agreement between the parties.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter contained, such parties, and each of them, do agree as follows:

**1. Premises.** The Landlord leases to Tenant, on the terms and conditions set forth herein, that part of the ground floor commercial space, shown as "Unit A" on the building floor plan attached as Exhibit A, (the Premises), containing approximately 3,134 gross square feet, are commonly known as 1231 Van Ness Avenue in a storefront in the City of Fresno's Parking Garage Number 9, Fresno, California, and are part of a structure known as Parking Structure No. 9. The Premises include Tenant's license to use, at no additional charge, two (2) vehicle parking spaces on the ground floor of Parking Structure No. 9, accessible from the alley behind the parking structure located at 1237 Van Ness Avenue, Fresno, California.

**1.1 Tenant's Acceptance of Premises "AS IS".** Neither Landlord nor any agent for Landlord has made any representation or promise regarding the Premises or Parking Structure No. 9, except as expressly set forth herein. Landlord is leasing the Premises to Tenant in "AS IS" condition, subject to Landlord's obligations to maintain only those parts of the Premises as set forth in this Agreement. Tenant has inspected the Premises and by taking possession accepts the Premises "AS IS," having exercised reasonable due diligence to discover any facts or conditions regarding the Premises that are within Tenant's attention, observation, actual and constructive notice.

**2. Term.** The term of this lease is thirty-six (36) months, beginning on January, 2024, and ending on January 31, 2027.

**2.1. Notice of Termination.** Either party may terminate this Agreement by giving at least thirty (30) days prior written notice thereof. The rent shall be due and payable through and including the date of termination.

**3. Rent.**

**3.1 Payment.** Monthly rent in the amount of Three Thousand One Hundred Thirty-Four Dollars (\$3,134.00) shall be due and payable beginning the first month of tenancy. Rent is due on or by the 5th day of each month.

**3.2 Late Rent.** Rent is late if not paid by the 6th day of each month.

**3.3 Late Fee.** A \$90.00 late fee will apply for any payments on or after the 6th of each month.

**3.4 Default.** Tenant's failure to pay Rent or any other amounts within five (5) days of its due date under this Agreement shall constitute a default under section 14.2 of this Agreement.

**3.4.1 Liquidated Damages.** Failure of the Tenant to pay Rent as and when due may cause Landlord to incur costs not contemplated by Landlord when entering into this Agreement, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. 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% of the past due amount, which the Parties agree represents a fair and reasonable estimate of the costs 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.

All sums of money due to Landlord under this Agreement not specifically characterized as Rent or as a Late Fee, 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 an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfactory promise of the amount which Landlord claims.



Initials of Tenant

**3.5 COVID related past-due fees.** Tenant has incurred past due fees is in the total amount of \$46,600.00, which was communicated through the local and state COVID emergency and was discussed and approved as a part of the development of this successor agreement and includes any and all compounded late fees, and full and partial closure losses under the state and local ordered closures. The past due fees were incurred between 2020 and February 2022.

Tenant has incurred the above past due amount from COVID-19 closure reductions in rent and past lapses provided for in prior COVID relief plans. As of the effective date of this Agreement, Landlord agrees to waive all amounts owing under this section. This waiver does not extend to Additional Rent amounts as mentioned in 3.4.1, or past due rent payments not mentioned herein.

Tenant shall pay at a minimum an additional \$638.88 for the three-six (36) months of the lease months for all rent in arrears.

**4. Utilities.** Tenant will pay, defend, and hold the Landlord free and harmless from, all charges for utility services to the Premises including, without limitation water, sewer, trash, gas, electricity, cable television and telephone service. Tenant shall pay the service provider directly before charges are delinquent. Landlord shall provide the Premises the following services: water, sewer and trash disposal. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause whatsoever, and rent shall not abate as a result thereof.

**5. Use of Premises.** Tenant will use the Premises solely as restaurant bar and grill with office space and uses incidental and related to that purpose. Tenant shall not use or permit the Premises to be used for any other purpose without first obtaining Landlord's written consent. There shall be no unlawful discrimination in the exercise of this Agreement or rights thereunder.

**5.1 Insurance Hazards.** Tenant will not use or permit the Premises to be used in any manner that will cause the cancellation of or increase the costs of any fire, liability, or other insurance policy covering the Premises or any improvements on the Premises. Tenant, at its sole cost and expense, shall comply with any requirement for or alteration to the Premises that any Insurance organization or company deems necessary to maintain reasonable fire and public liability insurance rates for the Premises (as part of Parking Structure No. 9).

**5.2 Waste, Nuisance, Quiet Enjoyment.** Tenant will not do any of the following: (a) commit or permit any waste on the Premises, (b) maintain, commit, or permit the maintenance or commission of any nuisance, as defined in Civil Code Section 3479 on the Premises, (c) use or permit the use of the Premises for any unlawful purpose, or (d) maintain, commit, or permit any other act or condition which may disturb the quiet enjoyment of Landlord or any other Tenant of the Premises and Parking Structure No. 9.

**5.3 Compliance with Laws.** Tenant, at its expense, will comply with all statutes, ordinances, regulations, and requirements of all governmental and regulatory entities, relating to Tenant's use and occupancy of the Premises, including environmental laws and legal requirements regarding the sale of alcohol. The judgment of any court of competent jurisdiction, or Tenant's admission in a proceeding brought against Tenant by any government entity that Tenant has violated any statute, ordinance, regulation, or requirement will be conclusive between Landlord and Tenant and will be grounds for the Landlord to terminate this Agreement.

**6. Parking.** Tenant shall be entitled to use two (2) parking spaces on the ground floor of Parking Structure No. 9. Tenant shall not use more parking spaces than said number. Said parking spaces shall be used for parking of vehicles no larger than full-size passenger automobiles or pick-up trucks. Landlord will identify Tenants parking spaces by stenciling Tenant's name on wheel stops.

**7. Taxes and Assessments.**

**7.1 Personal Property and Tenant Improvements.** Tenant will pay, before delinquency, all taxes, assessments, and other charges levied or imposed by any governmental entity on the furniture, trade fixtures, appliances, and other personal property that Tenant places in, on, or about the Premises.

**7.2 Real Property Taxes.** Tenant will pay before delinquency, any real property taxes and assessments for or on the Premises including, without limitation, possessory interest taxes, that any governmental entity may levy or assess against the Premises. Taxes include, without limitation, any special assessments imposed on or against the Premises for any Tenant improvements to the Premises.

**7.2.1 Possessory Interest.** Notification to Tenant pursuant to California Revenue and Taxation Code Section 107.6: A possessory Interest subject to property taxation may be created by entering into this Agreement and Tenant may be subject to the payment of property taxes levied on such interest. Any interest in real property which exists because of possession, exclusive use, or a right to possession or exclusive use of land owned by Landlord, and any Improvements thereon, is a taxable possessory interest unless the possessor is exempt from taxation. Tenant should take a copy of this Agreement to the Tax Assessor to learn how much Tenant will be taxed, if at all.

**7.3 Landlord Protection Against Taxes.** Tenant shall indemnify, defend, and hold Landlord and the Premises harmless from any liability for personal and real property taxes and assessments including, without limitation, any interest, penalty, or other expense relating to the taxes or assessments, and from any lien therefore

or sale or other proceeding to enforce payment thereof.

## **8. Trade Fixtures, Improvements and Alterations.**

**8.1 Installation and Removal of Trade Fixtures.** Tenant, at Tenant's sole cost and expense, may install or affix in, to, or on the Premises, items for Tenant's permitted use of the Premises (trade fixtures). At the expiration or any earlier termination of this Agreement, Tenant may remove those trade fixtures that are removable without damage to the Premises. Those items that are not removable without damage will remain and become the property of the Landlord. Landlord has the right to require Tenant to remove all trade fixtures and to repair any damage caused by the removal. Tenant must remove any trade fixtures on or before the termination or expiration date. Any trade fixtures that remain on the Premises for 30 days after this Agreement expires or terminates will be deemed abandoned by Tenant. Landlord may then elect to keep the property as its own, or require Tenant to remove same, at Tenant's sole expense, including the cost of repair of any damage to the Premises caused by the removal, or Landlord may elect to remove the abandoned trade fixtures at a cost to be billed to Tenant.

**8.2 Improvements.** Tenant may not alter or improve the Premises without first obtaining the Landlord's written consent to and approval of the alteration or improvement. After consent and approval, Tenant will complete the alterations or improvements in strict compliance with the approved plans and specifications. Tenant will keep the Premises free and clear from any liens, claims, and demands for work done, materials furnished, or operations conducted on the Premises at the Tenant's request or direction. Landlord, in its sole discretion, may disapprove all or any part of the proposed work or improvement.

**8.3 Ownership of Alterations, Additions, and Improvements.** All Tenant Improvements, and any other alterations, additions, and improvements, except Tenant's stock in trade, trade fixtures, furniture, and furnishings, made to or placed on the Premises by any person will become, on expiration or earlier termination of this Agreement, Landlord's property and remain on the Premises. The Landlord, however, has the option on expiration or termination of this Agreement, to require Tenant, at Tenant's sole cost and expense, to remove any or all such alterations, additions, and improvements from the Premises and repair any damage caused by the removal.

**8.4 Permit.** Tenant shall obtain and pay for all permits required by any governmental authority for any work, alteration, addition, or improvement that Tenant does or causes to be done on the Premises. Before undertaking any modifications, Tenant shall first determine the existence of toxic or hazardous materials, such as asbestos, within the proposed work area. Tenant shall secure or remove such materials following local, state and federal regulations at Tenant's sole cost and expense.

**8.5 Liens and Encumbrances.** Tenant shall keep the Premises and Parking Structure No. 9 free from any liens and encumbrances because of work done, materials furnished, or obligations incurred by Tenant in connection with any alteration, alteration addition, or improvement on or to Premises. Tenant shall indemnify, defend, and hold Landlord harmless from any cost or expense which Landlord shall incur because of any such lien or encumbrance.

**8.6 Inspection of the Premises.** Landlord and Tenant will participate in two walk-through inspections of the Premises. The first walk-through inspection will occur before the effective date of this Agreement. The second walk-through inspection will occur at the conclusion of the Agreement, after Tenant has vacated the premises. Upon termination of this Agreement, Tenant shall be responsible for costs to repair deficiencies beyond the normal wear and tear of the Premises.

**8.7 Landlord Improvements.** From time to time, the Landlord may construct improvements to the Premises or to Parking Structure No. 9. Upon reasonable notice (at least 24 hours), Tenant will allow Landlord any access needed to complete the work.

## **9. Maintenance of Premises**

### **9.1 Tenant's Obligations.**

**9.1.1 Maintenance and repairs.** At its sole cost and expense, Tenant shall undertake the routine cleaning and maintenance to the Premises. The Premises should be maintained in good order, condition, and repair. Tenant's obligations to maintain shall include, without limitation, windows (interior and exterior), doors (interior and exterior), skylights, the storefront, and the interior walls, floors, and ceilings, all plumbing and sewage facilities that exclusively serve the Premises. Tenant's maintenance obligations do not extend to the parts of the Premises that the Landlord is obligated to repair and maintain as outlined in section 10 of the agreement. In an emergency, the Landlord may make the necessary repairs for the Tenant or perform the necessary maintenance for the Tenant. Tenant will reimburse the Landlord for such repairs or maintenance on demand, with interest, at the maximum rate then permitted by law.

**9.1.2 Heating and Air Conditioning** Landlord has installed air conditioning and heating equipment to adequately heat and cool the Premises. Tenant has accepted the equipment in good operating condition. Landlord will maintain the air conditioning and heating equipment in good operating condition and repair. Landlord, or his designee, will enter the Premises to conduct regular maintenance on heating and air conditioning equipment.

**9.1.3 Tenant's Waiver of Civil Code Sections 1942 and 1941.** Tenant hereby waives all rights under Section 1942 of the California Civil Code to

make repairs at Landlord's expense and waives any rights under California Civil Code Section 1941 regarding Landlord's obligations to maintain tenant ability.

**10. Landlord's Obligations.**

**10.1 Maintenance.** Landlord, at its own cost and expense, and subject to the City Council's discretionary appropriation of funds, will maintain the structural elements of the Premises and Parking Structure No. 9 in good condition and repair. For purposes of this section, Structural Elements means the exterior roof, exterior walls (except window glass and doors), structural supports, and the foundation. Structural Elements will also include plumbing pipes to the extent that the pipes are an integral part of the flooring or foundation inaccessible to Tenant.

Notwithstanding anything in this section to the contrary, Tenant shall promptly repair any structural elements that need repair because of the negligence or other fault of Tenant, its employees, agents, or invitees.

**10.2 Major Repairs to Heating and Air Conditioning.** Landlord, at its cost and expense, and subject to City Council's discretionary appropriation of funds, shall be responsible for major (capital) repairs or replacement of the major working components of the heating and air conditioning system when necessary, unless the repair or replacement is necessitated by any act or omission of Tenant, its employees, agents, or invitees which shall be the Tenant's responsibility. Landlord shall inspect heating and air conditioning prior to Tenant taking occupancy to ensure that all components are in good working order.

**10.3 Notice from Tenant.** Tenant shall immediately notify Landlord in writing of any repairs, replacement, or maintenance requiring Landlord's attention. Landlord shall timely carry out its maintenance and repair obligations so as not to unreasonably disrupt Tenant's use and occupancy. Tenant shall not restrict Landlord, or his designee's ability to enter the Premises to conduct maintenance and repairs on the Premises, including but not limited to, heating and air conditioning.

**11. ADA Compliance.** Modifications, changes or construction of the Premises may be necessary to ensure compliance with the Americans with Disabilities Act. If modifications are made or required, they must be made according to the terms of this Agreement.

**11.1 ADA Updates.** Within 18 months of signing this Agreement, should Tenant desire to make updates in accordance with the ADA to the men's and women's restrooms on the Premises, Tenant may do so upon receiving approval from Landlord in writing. If Tenant elects to make the required upgrades, Landlord must approve all plans and costs associated with the upgrades, in writing, before work is performed.

**11.1.1. Rental Credit.** If Tenant completes the ADA upgrades within 18 months of the effective date of this Agreement, Tenant will receive a rental credit. The rental credit applied will be the cost of providing the upgrades less rental amount due. This sum will be considered a rental credit. The rental credit will be applied equally over a 12-month period. The ADA upgrades by Tenant must be approved by the Landlord, once complete, before any rental credit is applied and include proper permitting, and inspections as required.

**12. Landlord's Access to Premises.** Tenant will permit Landlord, or Landlord's agents, representatives, or employees to enter the Premises at all reasonable times to inspect the Premises, to learn whether Tenant is complying with the terms of this Agreement, to do other lawful acts that may be necessary to protect the Landlord's interest in the Premises, or to perform Landlord's duties under this Agreement.

**13. Force Majeure - Unavoidable Delays.** If any event, other than financial inability on the part of Tenant, delays or prevents the Tenant from performing any obligation under this Agreement, the parties will extend the time for performance by the period of delay. Delay events that permit extension include, without limitation, acts of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations. However, nothing contained in this subsection will excuse Tenant's prompt payment of rent or the performance of any act rendered difficult solely because of Tenant's financial condition.

**14. Default, Assignment, and Termination.**

**14.1 Restriction Against Subletting or Assignment.** Tenant will not encumber, assign, sublet, or otherwise transfer this Agreement, any right or interest in this Agreement, any right or interest in the Premises or any improvements on the Premises, without first obtaining the Landlord's written consent. The Landlord's consent in one instance will not be considered to be consent to any subsequent encumbrance, assignment, subletting, or transfer of the Premises. Any encumbrance, assignment, transfer, or subletting without the Landlord's prior written consent, whether voluntary or involuntary, by operation of law or otherwise, is void and, at the Landlord's option, will terminate this Agreement.

**14.2 Default Defined.** The occurrence of any of the following will be a material breach and a default of this Agreement:

**14.2.1 Payment of Money.** Tenant's failure to pay rent or to make any other payment under this Agreement within five (5) days of the due date.

**14.2.2 Abandonment.** Tenant's abandonment or vacation of the Premises. Tenant's absence from or failure to conduct business on the Premises for



more than 30 consecutive days will be abandonment or vacation for purposes of this Agreement.

**14.2.3 Insolvency.** Tenant does any of the following: (a) Tenant makes any general assignment for the benefit of creditors, (b) Tenant files bankruptcy, or a third party petition to have Tenant adjudged bankrupt, and does not dismiss the petition within 60 days, (c) Tenant files a petition for reorganization or arrangement under any law relating to bankruptcy, (d) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets at the Premises, or of Tenant's interest in this Agreement, and possession is not restored to Tenant within 30 days, or (e) the attachment, execution, or other judicial seizure of substantially all of Tenant's assets at the Premises, or of Tenant's Interest In this Agreement, and that seizure is not discharged within 30 days.

**14.3 Termination of Agreement and Recovery of Damages.** Upon any Tenant default, the Landlord may terminate this Agreement and all Tenants rights under it by giving thirty (30) days written notice of the termination. In addition, the Landlord may exercise any other remedies available to it at law or in equity. No act of Landlord, other than a written termination notice from Landlord to Tenant, will terminate this Agreement.

**14.4 Landlord's Right to Relet if Tenant Breaches this Agreement.** In the event of Tenant's breach of the Agreement and abandonment the Premises, Landlord may enter the Premises and relet it to a third party for any term, at any rental, and on any other conditions that Landlord in its sole discretion may deem advisable. The Landlord may also make alterations and repairs to the Premises.

**14.5 Landlord's Right to Cure Tenant Defaults.** If Tenant breaches or fails to perform any provision of this Agreement, the Landlord, at its option, may cure Tenant's breach. Tenant will reimburse the Landlord, on demand, for the Landlord's costs to cure the default.

**14.6 Cumulative Remedies.** The Landlord's remedies in this Section are not exclusive but cumulative, and in addition to all remedies now or after this allowed by law or provided elsewhere in this Agreement.

**14.7 Waiver of Breach.** If the Landlord waives any Tenant breach or default of any Agreement provision, the waiver will not be a continuing waiver or a waiver of Tenant's subsequent breach of the same or any other provision. The Landlord's acceptance of rent shall not be a waiver of any preceding breach by Tenant, other than the failure to pay the particular rental so accepted.

**15. Indemnification.** To the furthest extent allowed by law, Tenant shall indemnify, hold harmless and defend Landlord, and each of its officers, officials, employees, agents, and volunteers (referred to collectively as Landlord) from any and all loss, liability, fines,

penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Landlord, Tenant or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation expenses, and costs to enforce this agreement), arising or alleged to have arisen directly or indirectly out of Tenant's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of any part of the Premises, including any common area(s), upon which the Premises is located; or (iii) performance of, or failure to perform, this Agreement. Tenant's obligations under the preceding sentence shall apply to any negligence of Landlord, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct of Landlord.

Tenant acknowledges that any and all loss, liability, fines, penalties, forfeitures, costs and damages arising out of, alleged to have arisen out of, or in any way connected with the release or discharge of a hazardous substance, or the exacerbation of a potential environmental hazard, occurring as a result of or in connection with Tenant's occupancy, maintenance and/or use of the Premises, including any common area(s), upon which the Premises is located, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, relating to the environment and including any liability imposed by law or regulation, are expressly within the scope of the Indemnity set forth above.

Tenant's occupancy, maintenance and use of the Premises, including common area(s), upon which the Leased Premises is located, shall be at Tenant's sole risk and expense. Tenant accepts all risk relating to Tenant's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of any part of the Premises, including any common area(s), upon which the Premises is located; and (iii) the performance of, or failure to perform, this Agreement. Landlord shall not be liable to Tenant for, and Tenant hereby waives and releases Landlord from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Premises, including common areas, upon which the Premises is located in any way related to the Tenant's operations and activities. Tenant shall immediately notify Landlord of any occurrence on the Premises, including common area(s), upon which the Premises is located, resulting in injury or death to any person or damage to property of any person.

If Tenant should contract any work on the Premises or subcontract any of its obligations under this Agreement, Tenant shall require each contractor, or subcontractor to Indemnify, hold harmless and defend Landlord and each of its officers, officials, employees, agents, and authorized volunteers in accordance with the terms of the preceding paragraph.

The provisions of this Section shall survive termination or expiration of this Agreement.

## 16. Insurance.

(a) Throughout the life of this Lease, Tenant shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in its sole discretion. The City of Fresno and each of its officers, officials, employees, agents, and volunteers (hereinafter referred to collectively as "City") requires policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City pursuant to this section shall in any way relieve Tenant of its responsibilities under this Lease. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Lease) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The

Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

**MINIMUM LIMITS OF INSURANCE TENANT**

Tenant, or any party the Tenant subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to The City of Fresno and each of its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$300,000 damage to premises rented to you;
- (iv) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits and **EMPLOYER'S LIABILITY** with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **COMMERCIAL PROPERTY Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of TENANT'S business property.**

5. **LIQUOR LIABILITY INSURANCE** for alcoholic beverages that are to be sold, served or furnished, Liquor Liability coverage is required with limits of liability of not less than:

- (i) \$1,000,000 per occurrence;
- (ii) \$2,000,000 aggregate for bodily injury and property damage;

### **UMBRELLA OR EXCESS INSURANCE**

In the event Tenant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City of Fresno and each of its officers, officials, employees, agents and volunteers.

### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Tenant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Tenant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or
- (ii) Tenant shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

*All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to City, except ten (10) days for nonpayment of premium. Tenant is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Tenant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Tenant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The Commercial General, Liquor Liability and Automobile Liability policies of insurance shall be endorsed to name The City of Fresno and each of its officers, officials, employees, agents and volunteers as additional insureds.

Tenant shall establish additional insured status for the City under the General Liability policy for all operations by use of ISO Form CG 20 10 11 85, CG 20 26 04 13, or CG 20

11 04 13, or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

The Commercial General, Liquor Liability and Automobile Liability policies of insurance shall be endorsed so Tenant's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to The City of Fresno and each of its officers, officials, employees, agents and volunteers. If Tenant maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Tenant.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

All policies of insurance shall contain a waiver of subrogation as to The City of Fresno and each of its officers, officials, employees, agents, and volunteers.

**PROVIDING OF DOCUMENTS** - Tenant shall furnish City with all certificate(s) and applicable endorsements effecting coverage required herein. **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Lease and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Tenant shall immediately furnish City with a complete copy of any insurance policy required under this Lease, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Lease. All subcontractors working under the direction of Tenant shall also be required to provide all documents noted herein.

**MAINTENANCE OF COVERAGE** - If at any time during the life of the Lease or any extension, Tenant or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Lease shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City hereunder shall in any way relieve Tenant of its responsibilities under this Lease. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a

limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, its principals, officers, agents, employees, persons under the supervision of Tenant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

**SUBCONTRACTORS** - If Tenant should contract any work on the Premises or subcontract any of its obligations under this Agreement, Tenant shall require each consultant, contractor or subcontractor to provide insurance protection in favor of Landlord and its officers, officials, employees, agents, and volunteers in accordance with the terms of each of the preceding paragraphs, except that the consultant, contractor and subcontractor's certificates and endorsements shall be on file with Tenant and Landlord prior to the commencement of any work by the consultant, contractor or subcontractor.

**16.1 Tenant's Personal Property.** Tenant will maintain at its cost and expense an insurance policy for the full insurable value of all Tenant's fixtures and equipment and, to the extent possible, all merchandise that is in or on the Premises against damage or destruction by fire, theft, or the elements.

**17. Waiver of Subrogation.** Tenant and its insurers hereby waive all rights of recovery against Landlord and its officers, officials, employees, agents, and authorized volunteers, on account of injury, loss by or damage to the Tenant or its officers, employees, agents, consultants, contractors, subcontractors, invitees and volunteers, or its property or the property of others under its care, custody and control. Tenant shall give notice to its insurers that this waiver of subrogation is contained in this Agreement.

**18. Damage to or Destruction of Premises**

**18.1 Partial Damage or Destruction.** Landlord, at its sole option, and subject to City Council's discretionary appropriation of funds, may repair the Premises or terminate this Agreement upon written notice to Tenant if the Premises are partially destroyed or damaged from any cause. If Landlord elects to terminate this Agreement, termination shall be effective immediately. If Landlord elects to repair or restore the Premises, it will notify Tenant within twenty (20) business days, and shall complete the work within 120 days after the casualty date, and this Agreement will not terminate. Tenant shall be entitled to a proportionate rent reduction based on the extent to which the damage and the repair work interfere with Tenant's use and occupancy of the Premises for the use intended.

**18.2 Tenant Waiver of Right to Terminate.** Respecting any partial destruction that Landlord elects to repair, Tenant waives any right to terminate the Agreement under California Civil Code Sections 1932 (2), or 1933 (4).

**18.3 Total Destruction.** If the Premises are totally destroyed, this Agreement shall terminate as of the date of the casualty.

**19. Eminent Domain.** "Condemned" and "right of eminent domain" mean the right of the government to take property for public use, and shall include the intention to condemn expressed in writing as well as the filing of any action or proceeding for condemnation. If a body or entity, having the power to do so, condemns, begins an action or proceeding to condemn, or advises Landlord or Tenant in writing of its intent to condemn, all or part of the Premises, then the following shall apply:

**19.1 Landlord May Convey or Sell to Condemner.** Landlord, without any obligation or liability to Tenant, and without affecting the validity and existence of this Agreement other than as expressly provided herein, may agree to sell or convey the Premises or any part of it to the condemner, without first requiring that any action or proceeding be instituted in court. If an action or proceeding has been instituted, Landlord may convey or sell without requiring any trial or hearing. Landlord may stipulate to judgment therein for the taking of the Premises, or part of it, as sought by the condemner, free from this Agreement and the rights of Tenant.

**19.2 Condemnation Proceeds.** Tenant shall have no claim against Landlord for, and shall not be entitled to, any part of the sale or conveyance proceeds or any condemnation award. Tenant hereby assigns such interest, if any, that Tenant may have under this Agreement to any proceeds or condemnation award to Landlord. Tenant, however, may seek to recover against the condemner for Tenant's trade fixtures and any removable Tenant improvements that Tenant is entitled to remove upon the expiration or termination of this Agreement and Landlord will not have a claim to the recovery.

**19.3 Effect of Condemnation on Continuation of Agreement.** If 25% or more of the interior floor area of the Premises is condemned, or if the condemnation renders the Premises unusable, this Agreement shall terminate without further notice on the date that the condemner takes physical possession.


If the part of the Premises condemned is less than 25% of the interior floor area, or the Premises are useable for Tenant's purposes after condemnation, at the sole option of Landlord, this Agreement shall remain in effect and shall not terminate. Subject to any discretionary appropriations, if Landlord elects to continue the Agreement, Landlord shall repair and reconstruct the Premises. During any repair and reconstruction and after, Landlord shall abate Tenant's rent according and to the extent that Tenant's use of the Premises for the purposes intended are impaired. If Landlord elects to terminate this Agreement, the Agreement will terminate on the date the condemner takes physical possession.

**20. Surrender of Agreement Not a Merger.** If Landlord has approved any subleases, Tenant's voluntary or other surrender of this Agreement, or the parties' mutual cancellation of it, will not merge the ownership and leasehold interests. At Landlord's sole option, Tenant's surrender or any cancellation of the Agreement will terminate any subleases.



**21. Surrender of Premises.** Tenant shall surrender the Premises, at the expiration or earlier termination of this Agreement, in the same condition as when Tenant took possession, reasonable use and wear excepted. Tenant shall remove all Tenants signs and personal property, including trade fixtures that are removable without damage to the Premises. Any Tenant property remaining on the Premises after the expiration or termination, at Landlord's sole election, shall become the property of Landlord as provided elsewhere in this Agreement. Tenant shall repair any damage to the Premises or to Parking Structure No. 9 caused by Tenant's removal of its signs or trade fixtures.

**22. Holding over.** If Tenant fails to vacate and surrender the Premises on or before the expiration or termination date, the Agreement, at Landlord's option, shall be deemed a tenancy from month to month, until the Agreement is terminated in a matter prescribed by law. During any hold over, Tenant shall pay a monthly rent in the amount of Three Thousand One Hundred Thirty-Four Dollars \$3,114.00.

  
Initials of Tenant

**23. Successors and Assigns.** This Agreement shall benefit and be binding upon the parties and their successors and assigns, subject to the restrictions on Tenant's assignment and subletting.

**24. Venue.** Venue for any action or proceeding arising under this Agreement shall be Fresno County, California.

**25. Governing Law.** California Law governs this Agreement and the legal relations between the parties.

**26. Place of Payments.** Tenant shall pay all Rent and other sums payable to Landlord at:

Finance Department  
2600 Fresno Street, Suite 2156  
Fresno, CA 93721

**27. Notices.** Unless the law otherwise requires, any notice, demand, or communication hereunder, given by one party to the other, must be in writing. The notice or communication will be duly served when personally delivered or when deposited in the United States mail, first-class postage prepaid, and addressed as follows:

**Tenant:**

Kocky's Bar & Grill  
1231 Van Ness  
Fresno, CA 93721

**Landlord:**

Director  
General Services Department  
2101 G Street, Building A  
Fresno, CA 93706

Either party may change its address for notice purposes by delivering notice of the change as provided in this section. Notice shall be deemed complete when personally delivered or within 48 hours after the mailing of it, postage prepaid, and properly addressed.

**28. Attorneys' Fees.** If either party brings an action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees as fixed by the court or other tribunal.

**29. Time is of the essence.** Time is of the essence on this Agreement.

**30. Entire Agreement.** The exhibits referenced in this Agreement are by the references incorporated into and made a part of this Agreement. This Agreement is the entire agreement between Landlord and Tenant regarding the Premises. It correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises or this Agreement not expressly set forth in this instrument are void.

**31. Partial Invalidity.** If a court finds any provision of this Agreement to be invalid, void, or unenforceable, the provision will be severed from this Agreement and the remaining provisions of this Agreement will remain in effect.

**32. Amendments.** This Agreement may not be amended or otherwise modified in any way whatsoever, except in writing signed by the parties.

**33. Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the rent, fees and/or charges due to be made by Tenant hereunder shall be deemed to be other than on account of the rent, fees and/or charges due. No endorsement or statement on or accompanying such payment shall be deemed an accord and satisfaction or prejudice Landlord's right to the balance, or other remedies.

**34. Subordinate Rights.** This Agreement is subject and subordinate to the prior and future rights and obligations of Landlord, its successors and assigns, to use its property in the public interest, provided that the foregoing not unreasonably interferes with Tenant's use of the Premises as provided in this Agreement. This Agreement is subject to all matters of title which may affect the Premises now or hereafter.

**[SIGNATURES APPEAR ON NEXT PAGE]**

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

CITY OF FRESNO,  
A California municipal corporation

By: \_\_\_\_\_  
Georgeanne A. White  
City Manager

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

DocuSigned by:  
By: Kelsey Seib 11/30/2023  
Kelsey Seib Date  
Deputy City Attorney

ATTEST:  
TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy Date

Addresses:  
LANDLORD:  
City of Fresno  
Attention: Director  
General Services Department  
2201 G Street, Building A  
Fresno, CA 93706  
Phone: (559) 621-1155

Attachment:  
Exhibit A

Kocky's Bar and Grill

By: [Signature]

Name: Michael Smith

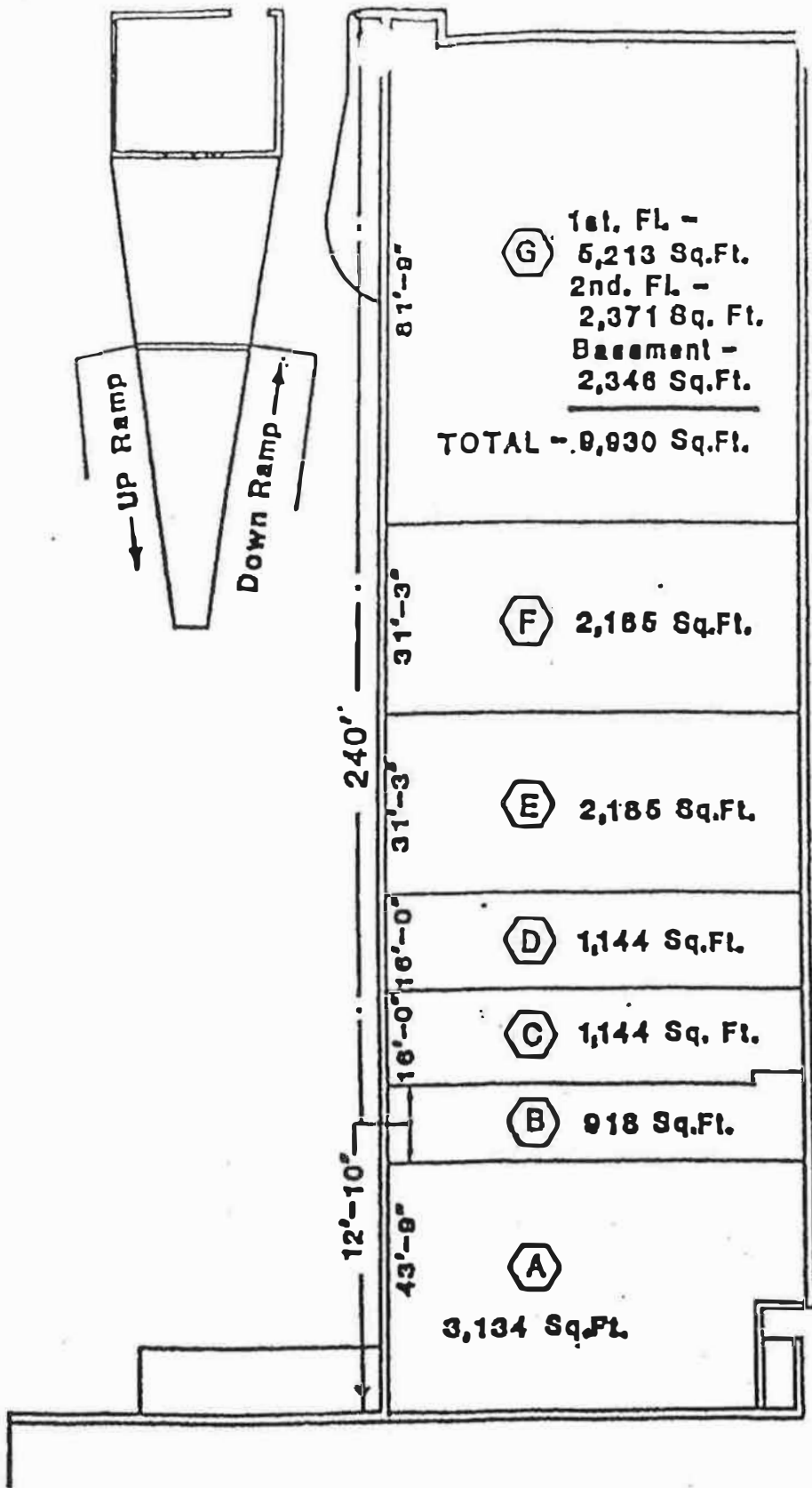
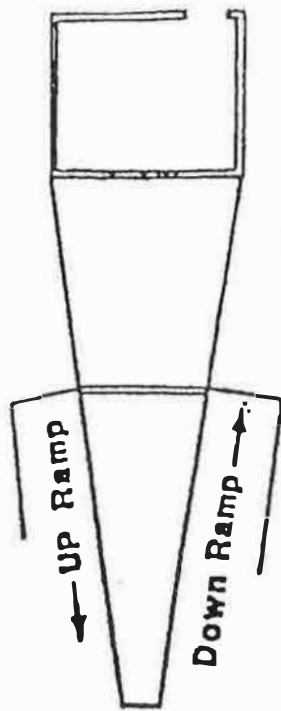
Title: co-owner  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

By: [Signature]

Name: James O'Donnell

Title: co-owner  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

TENANT:  
Kocky's Bar and Grill  
Attention: Owners  
James O'Donnell & Michael Smith  
1231 Van Ness Fresno, CA, 93721  
Phone: (559) 266-5500



Van Ness AVE.



EXHIBIT "A"

DEVELOPMENT DEPARTMENT 17

DRAWN BY:        DATE: 8-2

CHK'D BY:                      DATE: 2

PAGE NO.