

# EXHIBIT A



Fenix Capital Funding, LLC  
9265 4th Ave, 2nd fl.,  
Brooklyn, NY, 11209  
(877) 563-4226

## FUTURE RECEIVABLE PURCHASE AGREEMENT # 280205, 10/10/2023

### Merchant's Information:

**Legal Business Name:** Sky Bar & Grill LLC

**/DBA:** Sky Bar & Grill

**Entity Type:** Limited Liability Company

**Federal Tax ID:** [REDACTED]

**State of Incorporation:** [REDACTED]

**Business Address:** 15350 Fenkell Ave City: Detroit State: MI Zip: 48227

### Purchase and Sale of Future Receivables

Fenix Capital Funding, LLC (FNX) (together with its successors and/or assigns, the “**Purchaser**”) hereby purchases from the merchant set forth above (the “**Merchant**”), a percentage, as specified below (the “**Purchasing Percentage**”), of the proceeds of all future sales by Merchant, whether the proceeds are paid by cash, check, ACH and other electronic transfers, credit card, debit card, bank card (each such card shall be referred to herein as a “**Credit Card**”) and/or other means (collectively “**Future Sale Proceeds**”) until Purchaser has received the amount specified below (the “**Purchase Amount**”) in exchange for the advance by FNX to Merchant of the purchase price (“**Purchase Price**”), all as set forth below.

Purchase Price:	Purchased Percentage:	Purchased Amount:	Pay-Off Amount:	Disbursement Amount:
\$ 12,000.00	11 %	\$ 18,000.00	\$ 0.00	\$ 11,306.00
Application Fee	Processing Fee:	Monthly Processing Fee:	Wire Fee:	Insufficient Funds Fee:
\$ 0.00	\$ 600.00	\$ 49.00	\$45.00	\$50.00

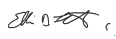
\*For the complete list of possible additional fees, please refer to page 11 of the future receivables purchase agreement.

### Validity Guarantee

In Consideration of Purchaser entering into this Agreement, and to induce Purchaser to enter into this Agreement, the undersigned principal(s) of Merchant (the “**Guarantor(s)**”) hereby personally and unconditionally guarantee(s) the performance by Merchant of all of its obligations under this Agreement and further guarantee(s) the accuracy, truthfulness, and completeness of all representations, warranties and covenants made by the Merchant in the Agreement. The foregoing guarantees shall be continuing and irrevocable and the Guarantor(s) hereby waive(s) demand of payment, notice and presentment and agrees that the Purchaser may proceed directly against the Guarantor(s) without first proceeding against Merchant. The Guarantor(s) further guarantee(s) payment of all costs, expenses, and attorney’s fees which may be incurred as a result of Merchant’s default in the performance of its obligations or as a result of the Guarantor(s)’s default under this guarantee. Guarantor(s) authorize(s) purchaser and its agents and representatives and any and all credit reporting agency employed by Purchaser to investigate any reference given or any other statements of data obtained from or about the Guarantor(s) and to order, receive, and review credit reports on the Guarantor(s) at any time now or in the future.

### Merchant – Sky Bar & Grill LLC

By: Ebbie D Herbert

→  10/11/2023  
Signature Date

SS#: [REDACTED] Ownership %: 50 Phone#:

Home Address: 31262 Huntley Square E #1214, Beverly Hills, MI, 48025

By signing, I agree to the terms of the Validity Guarantee above, even if signed as an officer of Merchant. I have read this Agreement and acknowledge that this Agreement contains a Waiver of Jury Trial and Jurisdiction and Venue clauses. I agree to be bound by the Waiver of Jury Trial and Jurisdiction and Venue clauses.

By: Antjuan D Herbert

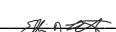
→  10/11/2023  
Signature Date

SS#: [REDACTED] Ownership %: 50 Phone#: Home Address: 18627 Mark Twain St, Detroit, MI, 48235

By signing, I agree to the terms of the Validity Guarantee above, even if signed as an officer of Merchant. I have read this Agreement and acknowledge that this Agreement contains a Waiver of Jury Trial and Jurisdiction and Venue clauses. I agree to be bound by the Waiver of Jury Trial and Jurisdiction and Venue clauses.

### Merchant: Sky Bar & Grill LLC

### Fenix Capital Funding, LLC

→  10/11/2023  
Signature Date Signed

→ \_\_\_\_\_  
Signature Date Signed

## FUTURE RECEIVABLE PURCHASE AGREEMENT TERMS AND CONDITIONS

### ARTICLE 1: PURCHASE AND SALE OF FUTURE RECEIVABLES

#### SECTION 1.1 DEPOSITS.

- In exchange for the foregoing, Merchant shall:
- Deposit all Future Sale Proceeds into the bank account identified on Page Nine (9) of this Agreement (the “**Bank Account**”);
  - Identify for Purchaser all other existing and future bank accounts maintained or used by Merchant;
  - Not deposit any funds into the Bank Account other than Future Sale Proceeds (and, if any such deposits of funds other than Future Sale Proceeds are made, notify Merchant as soon as reasonably practicable);
  - Enter into a Credit Card processing agreement reasonably acceptable to and approved by Purchaser with a Credit Card Processor (the “**Credit Card Processor**”), who shall serve as Merchant’s sole Credit Card Processor for credit and card transactions and related services; and in the event that Merchant’s current credit card processor is not deemed acceptable to Purchaser, at Purchaser’s sole discretion, Merchant shall, within two (2) business days of its receipt of the request to do so, shall, at its sole cost and expense, terminate its relationship with the Credit Card Processor and exclusively engage the services of an alternative credit card processor that Purchaser approves in writing and enter into any Merchant credit card processing agreement as the alternative credit card the Credit Card Processor may require (so long as the fees and costs charged to Merchant by the new Credit Card Processor are no higher, in the aggregate, than the fees previously charged by Merchant’s original Credit Card Processor).
  - Instruct the Credit Card Processor to deposit all Credit Card receipts of Merchant into the Bank Account.
  - At Purchaser’s request, Purchaser may review any Credit Card processing agreement that Merchant has entered into before the date of this Agreement, and Purchaser may approve or reject, any Credit Card processing agreement, at Purchaser’s sole discretion. The effective date of this Agreement is the date on which Purchaser signs this Agreement on Page One hereof.

#### SECTION 1.2 TRANSFERS AND TRANSACTIONS.

Merchant authorized Purchaser and its agents and representatives to initiate electronic checks or ACH transactions in amounts specified in Section 1.3, until Purchaser has received an amount equal to the Purchased Amount. Merchant authorizes the bank holding the Bank Account (the “**Bank**”) and all applicable third parties, to provide Purchaser and its agents and representatives all information necessary to permit them to determine the amount to be paid to Merchant and initiate such electronic check or ACH transactions.

#### SECTION 1.3 AUTHORIZATIONS.

- On each day after the date of this Agreement, Merchant authorizes Purchaser in accordance with Section 1.2, to initiate electronic checks or ACH transactions from the Bank Account in an amount not to exceed on any one day the Initial Daily Transfer Amount. The amount paid by the Credit Card Processor to Purchaser plus the amount transferred from the Bank Account to Purchaser on any one day shall not exceed the Initial Daily Transfer Amount, until Purchaser determines a new Daily Transfer Amount.
- On the 15th and 30th day of each calendar month (or on the last day of any calendar month with fewer than 30 days), Purchaser may evaluate the amounts received from the Bank Accounts to determine a new Daily Transfer Amount. If the 15th or 30th day of any calendar month (or the last day of any calendar month with fewer than 30 days) falls on a weekend, then Purchaser may determine the new Daily Transfer amount on the next business day.
- Merchant shall provide Purchaser with online access to the Bank Account (or, at Purchaser’s request, provide bank statements showing the activity related to the Bank Account within three (3) business days of receiving any bank statement from the Bank).
- Merchant also hereby authorizes Purchaser to obtain any bank statement directly from the Bank and any other financial institution(s) for the Bank Account and for any other bank accounts in the name of Merchant or Guarantor(s).
- Purchaser shall use reasonable business practices to calculate Daily Transfer Amounts so that Purchaser is receiving, over the term of this Agreement, the approximate Purchased Percentage of each Credit Card receivable due to Merchant and the Purchased Percentage of all other deposits made into the Bank Account. From time to time, Purchaser may initiate an electronic check or ACH transaction from the Bank Account to increase the total amount received by Purchaser up to an amount that equals the total Purchased Percentage of each Credit Receivable due to Merchant and the Purchased

Percentage of all deposits made into the Bank Account. Purchaser also may, at any time, and in its sole discretion, change the time for calculating the Daily Transfer Amount and calculate the Purchased Percentage due under this Agreement on a Daily basis instead of on a bi-weekly basis.

- Except as provided in Section 1.4, Purchaser will have no obligation to refund any amounts to Merchant, except that if at the end of this Agreement Purchaser has collected any amounts in excess of the total Purchased Amount, Purchaser shall promptly return such excess to Merchant.

**SECTION 1.4 UNAUTHORIZED DEPOSITS.** If at any time Merchant informs Purchaser or Purchaser learns that a deposit has been made into the Bank Account that represents something other than Future Sale Proceeds, and Purchaser has removed the Purchased Percentage from such deposit, Purchaser shall, at its discretion:

- return such amount to the Bank Account, or
- Reconcile the overpayment by reducing the Daily Transfer Amounts for an appropriate period of time.

**SECTION 1.5 PROCESSING FEE.** Merchant shall pay Purchaser a processing fee as stated on Page One (1) of this Agreement at the time Merchant signs this Agreement.

**SECTION 1.6 SECURITY INTEREST.** As security for all “Obligations” (as herein defined), Merchant hereby grants to Purchaser a continuing security interest in, and, as applicable, a general lien upon and/or a right of setoff against, all of Merchant’s presently existing and hereafter created Receivables, General Intangibles (as such term is defined in the Uniform Commercial Code), including, without limitation, any claims for tax refunds from any governmental authority due or to become due to Merchant which claims are hereby assigned to Purchaser, all proceeds of letters of credit, all credit balances with Purchaser, all instruments, all securities accounts, all investment property, all deposit accounts, all computer programs, software, licenses and permits and all Merchant’s property of every kind and description, tangible or intangible, at any time in Purchaser’s possession or subject to Purchaser’s control, whether now or hereafter arising or now owned or hereafter acquired and wherever located and all proceeds of the foregoing. As used herein, the term “Obligations” means and includes all indebtedness, liabilities, obligations, debit balances, covenants and duties owing by Merchant to Purchaser of every kind and description (whether now or hereafter existing and whether arising under this Agreement or otherwise), direct or indirect, absolute or contingent, due or to become due, including, without limitation, any indebtedness, liabilities or obligations owing by Merchant to others which Purchaser has acquired by assignment, participation or otherwise, and further including, without limitation, all interest, fees, charges, expenses and attorneys’ fees for which Merchant may be obligated hereunder. Merchant hereby authorizes Purchaser to file one or more Financing Statements (UCC-1) evidencing this security interest and sale of the Purchased Amount of Future Sale Proceeds under this Agreement, and any Continuation Statement or Amendments thereof, and ratifies and affirms the filing of any Financing Statement filed by Purchaser prior to the effectiveness of this Agreement. The Uniform Commercial Code (“**UCC**”) Financing Statement shall include a statement that the sale of the Future Sale Proceeds of Merchant is intended to be a sale of future receivables and not an assignment for security. The UCC Financing Statement shall further state that Merchant is prohibited from incurring any debt, transferring future receivables, or sale proceeds to any other person or granting any security interest in its accounts receivable or other assets until Purchaser has received all amounts due under this Agreement. If Merchant has fully performed all of Merchant’s obligations under this Agreement, Purchaser shall cause the filing of a Termination Statement (UCC-3) within the time required by law following Merchant’s written demand. In addition, Merchant shall, from time to time, promptly execute and deliver any and all instruments and documents, and take all future action that may be deemed necessary or appropriate by Purchaser, or that Purchaser may request, in order to perfect against Merchant and all third parties, the sale of the Purchased Amount of Future Sale Proceeds under this Agreement and/or to enable Purchaser to exercise and enforce its rights and remedies under this Agreement. Purchaser reserves the right to obtain reimbursement from Merchant for all costs associated with the filing of any UCC Financing Statements.

#### **SECTION 1.7 ADJUSTMENTS TO THE SPECIFIC AMOUNT.**

The Disbursement Amount is intended to represent the Purchased Percentage of the Merchant’s Receivables each calendar month. At any time, Purchaser may

adjust the Disbursement Amount so that the amount received by Purchaser in the future more closely represents the Purchased Percentage. Also, once each calendar month Merchant may request that Purchaser reconcile Merchant's actual receipts and adjust the Disbursement Amount so that the amount received by Purchaser in the future more closely represents the Purchased Percentage. Upon receipt of a written reconciliation request from Merchant, Purchaser may request any and all information from Merchant that Purchaser, in its sole judgment, believes is necessary to accurately reconcile the amount Purchaser has received from Merchant with the actual Purchased Percentage. Purchaser shall not be required to adjust the Disbursement Amount until such time as it has received all such requested information.

## **ARTICLE 2: RECEIVABLES**

**SECTION 2.1 NOT A LOAN.** Merchant and Purchaser acknowledge and agree that the Purchase Price paid by Purchaser in exchange for the Purchased Amount of Future Sale Proceeds is a purchase of the Purchased Amount (as defined on Page One (1)) and is not intended to be, nor shall it be construed as a loan from Purchaser to Merchant. Each Future Sale Proceeds purchased by Purchaser under this Agreement represents a bona fide sale by a Merchant to a customer. Each Future Sale Proceeds purchased by Purchaser Merchant is free and clear of all encumbrances and shall be owned free and clear by Merchant upon receipt (other than Merchant's obligations to Purchaser hereunder). Merchant acknowledges and agrees that it may use the Purchase Price solely for business purposes and not for personal, family or household purposes. Merchant is selling a portion of a future revenue stream to Purchaser at a discount, not borrowing money from Purchaser. There is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by Purchaser. Merchant going bankrupt or going out of business, in and of itself, does not constitute a breach of this Agreement. Purchaser is entering into this Agreement knowing the risks that Merchant's business may slow down or fail, and Purchaser assumes these risks based on Merchant's and Guarantor's representations, warranties and covenants in this Agreement, which are designed to give Purchaser a reasonable and fair opportunity to receive the benefit of its bargain.

**SECTION 2.2 RECEIVABLES.** For all purposes hereof, the term "Receivables" shall mean and include all accounts, contract rights, general intangibles, chattel papers, instruments, documents and all forms of obligations owing to Merchant arising from or out of the sale of merchandise and/or the rendition of services, all proceeds thereof, all Merchant's: a) rights to merchandise represented thereby; b) rights under insurance policies covering merchandise or services; c) rights against carriers of said merchandise; and d) right, title, security interests and guarantees with respect to each Receivable, including all rights of replevin and reclamation and stoppage in transit and all other rights of an unpaid Merchant of merchandise or services.

**SECTION 2.3 WRITTEN SCHEDULES.** Upon Purchaser's request, Merchant shall execute and deliver to Purchaser written schedules of all Receivables sold or assigned hereunder in form satisfactory to Purchaser, together with copies of customer's invoices or the equivalent and upon Purchaser's request, conclusive evidence of delivery for all goods sold or rendition of services and all other information or documents Purchaser may require. Merchant's failure to execute and deliver such schedule of Receivables shall not affect the assignment of such Receivables hereunder.

**SECTION 2.4 COLLECTION OF PAYMENTS.** As provided in this Section, the Purchased Percentage (as defined on Page One (1)) of each Future Sale Proceeds shall be collected by Purchaser from electronic check or ACH transactions initiated by Purchaser or its agents from the Bank Account. In the event that Merchant changes or permits the change of the Bank Account or the Credit Card Processor or adds an additional Bank Account or Credit Card Processor, Purchaser shall have the right, without waiving any of its other rights and remedies under this Agreement, and without notice to Merchant, to notify the new or additional Bank or Credit Card Processor of the sale of Future Sale Proceeds under this Agreement and to collect from such new or additional Bank or Credit Card Processor. Merchant, by executing this Agreement, hereby grants to Purchaser an irrevocable Power of Attorney, which Power of Attorney shall be coupled with an interest, and hereby appoints Purchaser or any of Purchaser's agents and representatives as Merchant's Attorney-in-Fact, to take any and all action necessary to direct such new or additional Bank or Credit Card Processor to make payment to Purchaser as contemplated by this Section 2.4.

**SECTION 2.5 FULL FORCE AND EFFECT.** This Agreement shall be in full force and effect until such time as the Purchased Amount of Future Sale Proceeds has been received by Purchaser from Merchant.

**SECTION 2.6 USURY.** In addition to the acknowledgements and understandings set forth in Section 2.1 above, it is the intent of the parties hereto not to violate any federal or state law, rule or regulation pertaining either to usury or to the contracting for or charging or collecting of interest, and Merchant and Purchaser agree that, should any provision of this Agreement, or any act performed hereunder or thereunder, violate any such law, rule or regulation, then the excess of interest contracted for or charged or collected over the maximum lawful rate of interest shall be applied to the outstanding principal indebtedness due to Purchaser by Merchant under this Agreement. Merchant agrees that the Purchase Price is in exchange for the Receivables pursuant to this Agreement, and that it equals the fair market value of such Receivables. Purchaser has purchased and shall own all of the Receivables described in this Agreement up to the full Purchased Amount as the Receivables are created. Payments made to Purchaser in respect to the full amount of the Receivables shall be conditioned upon Merchant's sale of products and services, and the payment therefore by Merchant's customers. In no event shall the aggregate of all amounts or any portion thereof be deemed as interest hereunder, and in the event it is found to be interest despite the parties hereto specifically representing that it is NOT interest – it shall be found that no sum charged or collected hereunder shall exceed the highest rate permissible at law. In the event that a court nonetheless determines that Purchaser has charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and Purchaser shall promptly refund to Merchant any interest received by Purchaser in excess of the maximum lawful rate, it being unintended that Merchant not pay or contract to pay, and that Purchaser not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Merchant under applicable law. As a result thereof, Merchant and Guarantor knowingly and willingly waive the defense of Usury in any action or proceeding.

## **ARTICLE 3: STATEMENTS AND REPORTS**

**SECTION 3.1 REPORTS.** Merchant acknowledges and agrees that in connection with the execution of this Agreement, an Investigative or Consumer Report may be requested, received or made by Purchaser. Accordingly, Merchant authorizes the Purchase and its agents and representatives, and any and all credit reporting agency employed by Purchaser, to investigate any references given or any other statements of data obtained from or about Merchant or the Guarantor(s) for the purpose of this Agreement and to order, receive, and review credit reports concerning Merchant or the Guarantor(s) at any time now or in the future.

**SECTION 3.2 STATEMENTS.** Purchaser shall provide Merchant with a monthly statement evidencing the delivery and receipt of the Purchased Percentage to Purchaser from the Future Sale Proceeds of Merchant.

**SECTION 3.3 ACCOUNTING RECORDS, AND PLACE OF BUSINESS.** Purchaser or its agents and representatives shall have the right, during Merchant's normal business hours (and at any other reasonable time) to examine the interior and exterior of any of Merchant's places of business. Purchaser may examine, among other things, whether Merchant:

- has a place of business that is separate from any personal residence,
- is open for business, and
- has sufficient inventory to conduct Merchant's business.

When performing an examination, Purchaser may photograph the interior and exterior of any of Merchant's places of business, including any signage, and may photograph any Owner. Purchaser or any of its agents and representatives shall have the right to inspect, audit, check, and make extracts from any copies of the books, records, journals, orders, receipts, correspondence that relate to Merchant's accounts or other transactions between the parties in this Agreement, and the general financial condition of Merchant. Purchaser may remove any of such records temporarily for the purpose of having copies made thereof. Purchaser shall have the right to hire a Certified Public Accountant, licensed in the State of New York, to perform analysis of the accounting records for the purpose of determining if the Purchased Percentage from the Future Sale Proceeds has been made available for remittance to Purchaser. Merchant shall fully cooperate with such inspection, audit or analysis upon the request of Purchaser.

**SECTION 3.4 AUTHORIZATION TO CONTACT MERCHANT AND/OR GUARANTOR BY PHONE.** Merchant and each Owner and Guarantor

authorize Purchaser, its agents and representatives to contact Merchant and each Owner or Guarantor at any telephone number Merchant or any Owner and Guarantor provides to Purchaser, or from which Merchant or any Owner or Guarantor places a call to Purchaser, or any telephone number where Purchaser believes it may reach Merchant or any Owner or Guarantor, using any means of communication, including but not limited to calls or text messages to mobile, cellular, wireless or similar devices or calls or text messages using an automated telephone dialing system and/or artificial voices or prerecorded messages, even if Merchant or any Owner and/or Guarantor incurs charges for receiving such communications.

**SECTION 3.5 AUTHORIZATION TO CONTACT MERCHANT AND/OR GUARANTOR BY OTHER MEANS.** Merchant and each Owner and each Guarantor also agree that Purchaser and its agents and representatives may use any other medium not prohibited by law including, but not limited to, mail, e-mail and facsimile, to contact Merchant and each Owner and each Guarantor. Merchant and each Owner and Guarantor expressly consent to conduct business by electronic means.

#### **ARTICLE 4: ACH AUTHORIZATION AND CREDIT CARD PROCESSING AGREEMENT**

**SECTION 4.1 ACH AUTHORIZATION.** Simultaneously with the execution of this Agreement, Merchant authorized Purchaser and its agents and representatives to initiate electronic check or ACH transactions equal to the Purchased Percentage of all Future Sale Proceeds of Merchant. Such authorization shall continue until Purchaser has received an amount equal to the Purchased Amount. Merchant further authorizes the Bank and its Credit Card Processor and all third parties (if applicable) to provide to Purchaser and its agents all information reasonably necessary to permit Purchaser to ascertain the amount to be paid to Purchaser and initiate such electronic check or ACH transactions from a bank account approved by Purchaser ("**Bank Account**"). This authorization shall only be revoked with the prior written consent of Purchaser. Merchant agrees to pay an insufficient funds fee as stated on Page One (1) of this Agreement, if any electronic check or ACH transaction is rejected or dishonored. Additionally, the Bank Account may not be closed and Merchant's agreement with the Credit Card Processors cannot be amended or terminated without the prior written consent of Purchaser. In the event that Purchaser determines, in its sole discretion, that the Bank or the authorized Credit Card Processor utilized by Merchant is no longer acceptable, Merchant shall, upon receipt of written notice from the Purchase, have five (5) business days to terminate its relationship with the Bank or its Credit Processor and to open a new Bank Account or enter into a similar Processing Agreement with a new Bank or Credit Card Processor. Merchant agrees to execute any and all documents and/or agreement(s) in order to satisfy this Section.

**SECTION 4.2 UNAUTHORIZED ACTIONS.** Purchaser is neither responsible nor shall it be liable for any actions undertaken by the Bank or Merchant's Credit Card Processor which are not contemplated or authorized by this Agreement or the Processing Agreement to be entered into by and between Merchant and the Credit Card Processor. Merchant and Guarantor(s), by execution of this Agreement, hereby agrees to indemnify and hold Purchaser, its officers, directors and shareholders harmless against all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) from any and all actions of the Bank or the Credit Card Processor.

**SECTION 4.3 FEES.** Purchaser and Merchant understand that the Bank and the Credit Card Processor will charge a fee or commission to Merchant for processing electronic checks, ACH transactions and receipts representing Future Sale Proceeds. Both parties further understand that the amount due to Purchaser under this Agreement shall be based solely upon the net amount due to Merchant from the Future Sale Proceeds after deducting the Bank and Credit Card Processor's fee or commission from the Future Sale Proceeds.

**SECTION 4.4 AUTHORIZATION TO OBTAIN INFORMATION.** During the entire time period that this Agreement shall be in force and effect, Merchant hereby authorizes Purchaser to:

- a. Contact any Bank or Credit Card Processor used by the Merchant (current or prior) in order to obtain whatever information Purchaser deems it may require regarding Merchant's transactions with any such Bank or Credit Card Processor. Such information shall include, but is not limited to, information Purchaser deems necessary to verify the amount of Future Sale Proceeds previously received or processed on behalf of Merchant and any and all fees

which may have been charged to Merchant by the Bank or Credit Card Processor; and

- b. Contact any Bank or Credit Card Processor of Merchant (current or prior) in order to confirm that Merchant is exclusively using the Bank Account and the Credit Card Processor.

#### **ARTICLE 5: BINDING ACCEPTANCE**

**SECTION 5.1 BINDING AGREEMENT.** Upon execution of this Agreement, each of the parties subject to this Agreement shall be obligated under this Agreement, and shall be subject to all of the terms and condition stated in this Agreement. The person executing this Agreement represents and warrants that he/she is authorized to bind Merchant to all of the terms and conditions set forth in this Agreement and that all of the information provided herein is true, and accurate in all respects. Purchaser's payment of the Purchase Price shall be deemed Purchaser's acceptance of this Agreement, notwithstanding Purchaser's failure to execute this Agreement.

#### **ARTICLE 6: REPRESENTATIONS, WARRANTIES AND COVENANTS**

**SECTION 6.1 REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Merchant hereby represents, warrants and covenants that as of this date, and during the term of this Agreement, Merchant shall:

- a. Exclusively use the Bank Account for the deposit of all proceeds of all sales;
- b. Exclusively use the Credit Card Processor for the processing of all of its Credit Card transactions;
- c. Not individually, nor through any of its affiliates, agents or employees ("Merchant Parties") take any action to discourage the use of credit and or debit cards which are settled through the Credit Card Processor or permit any event to occur which may have an adverse effect on the use, acceptance or authorization of credit and or debit cards for the purchase of Merchant's services and products;
- d. Not close the Bank Account or cease to use the Bank Account as the sole account into which to deposit all Future Sale Proceeds;
- e. Not amend or terminate, or consent to the termination of:
  - i. the Processing Agreement with the Credit Card Processor; or
  - ii. any authorization to initiate electronic check payment or ACH transactions from the Bank Account; or
  - iii. the consent to obtain information granted by Merchant to Purchaser or its agents under this agreement;
- f. Not breach or default the deposit agreement with the Bank maintaining the Bank Account;
- g. Not breach or default under the processing agreement with the Credit Card Processor acceptable to and approved by Purchaser;
- h. Not change or permit the change of the Bank or Credit Card Processor or add an additional Bank to hold deposits of Merchant or Credit Card Processor, in each case, without providing Purchaser at least fifteen (15) business days prior written notice of such change;
- i. Not sell, dispose, convey or otherwise transfer its business or all or any substantial portion of its assets (whether in the usual course of business or not), in each case, without the express written consent of the Purchaser, and Purchaser or assignee's assumption of all of Merchant's obligations under this Agreement pursuant to the documentation reasonably satisfactory to Purchaser;
- j. Not sell, dispose, convey or otherwise transfer any of its Future Sale Proceeds;
- k. Not grant any security interest or lien upon its Future Sale Proceeds, accounts receivable or other assets;
- l. Not sell, dispose, convey or otherwise transfer its business or assets without the express prior written consent of Purchaser (and acknowledges that any approved sale or other disposition of assets shall provide for the assumption of all of Merchant's obligations under this Agreement by the purchaser or transferee of the business or assets pursuant to documentation reasonably satisfactory to Purchaser);
- m. Not incur any debt on the business not incurred in the ordinary course of business without the express prior written consent of Purchaser;
- n. Not divert any cash, checks, electronic transactions, or other Future Sale Proceeds in any manner or to any person, location or account, other than the Bank Account; and
- o. Not commit fraud against Purchaser.

**SECTION 6.2 ADDITIONAL REPRESENTATIONS.** Merchant hereby represents, warrants and covenants that as of this date, Merchant:

- a. has no open cash advances with another cash advance funding company or, if Merchant has an open cash advance with another cash advance funding company, Merchant will disclose such information to Purchaser and allow Purchaser to use funds from Purchase Price to pay off the current balance;
- b. has no lawsuits and/or claims either threatened or pending against Merchant;
- c. has not filed, nor is contemplating the filing a proceeding for relief under the Bankruptcy Code, in the foreseeable future;
- d. has obtained, possesses and is in full compliance with all requisite permits, licenses, approvals, consents and other authorizations necessary to own, operate, and/or lease its properties and conduct its business in which it is presently engaged, is in compliance with any and all applicable federal, state, and local laws and regulations, and possesses all requisite permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged.
- e. Merchant's duly authorized representative is the individual executing this Agreement on behalf of Merchant, with the requisite authority under Merchant's governing documents and was duly authorized by Merchant to sign this Agreement on its behalf.

**SECTION 6.3 TRUTHFULNESS OF INFORMATION.** The information provided by or on behalf of Merchant to Purchaser in connection with the execution of, or pursuant to this Agreement, is and shall be true and correct in all material respects. Merchant shall furnish Purchaser with such other information as Purchaser may request from time to time, including all information necessary to permit Purchaser and its agents to determine the amount to be paid to Purchaser and to initiate electronic check or ACH transactions from the Bank Account.

**SECTION 6.4 RELIANCE.** Merchant acknowledges that the information provided by Merchant has been relied upon by Purchaser in connection with its decision to purchase the Future Sale Proceeds.

**SECTION 6.5 COMPLIANCE WITH THE LAW.** Merchant possesses and is in compliance with all permits, approvals, consents, and other authorizations necessary to conduct its business. Merchant is in compliance with any and all applicable federal, state and local laws and regulations. Merchant possesses all requisite permits, authorizations, and licenses to own, operate, and lease its properties, and to conduct the business in which it is presently engaged.

**SECTION 6.6 AUTHORITY.** Merchant and the person(s) signing this Agreement on behalf of Merchant, have full power and Authority to enter into and perform the obligations under this Agreement, all of which have been duly authorized by all necessary and proper action.

**SECTION 6.7 INSURANCE.** Merchant shall maintain insurance in such amount and against such risks as are consistent with past practice and the applicable standard in Merchant's industry, and shall show proof of such insurance simultaneously with the execution of this Agreement, and upon the reasonable request of Purchaser in the future, within three (3) business days of such request.

**SECTION 6.8 BUSINESS NAME.** Merchant shall not conduct its business under any name other than as disclosed to the Bank and the Credit Card Processor and Purchaser or change any of its places of business. In addition, Merchant shall not change its legal name, entity type, or state information, unless it has provided Purchaser with at least thirty (30) days prior written notice thereof, and copies of any and all documents, agreements and information reasonably requested by Purchaser with respect thereto.

**SECTION 6.9 INDUSTRY STANDARD.** The Merchant shall continue to conduct its business consistent with its industry's standard and past practice, and shall comply with all the terms and conditions of its deposit account agreement with the Bank and its Processing Agreement with the Credit Card Processor. Merchant has no present intention of closing its business or ceasing to operate business, either permanently or temporarily, during the twelve (12) month period after the date of this Agreement. Merchant hereby acknowledges that Purchaser shall rely and has relied on this representation in its decision to enter into this Agreement.

**SECTION 6.10 DEBTOR.** Merchant is not a debtor of Purchaser as of the date of this Agreement.

**SECTION 6.11 BANK ACCOUNT.** Merchant understands that the Bank Account is the sole and exclusive location where it shall deposit all sale proceeds, and that the services of the Credit Card Process are the sole and exclusive means by which Merchant shall process its Credit Card transactions.

**SECTION 6.12 FURTHER REASSURANCES.** As of the date of this Agreement, Merchant is solvent, and is not contemplating any bankruptcy or insolvency proceedings. Merchant hereby acknowledges that Purchaser shall rely and has relied on this representation in its decision to enter into this Agreement.

**SECTION 6.13 NO CURRENT OR PENDING LITIGATION.** Merchant represents and warrants that it is not currently subject to any litigation, arbitration, or any other claims against it as of the execution of this Agreement. Merchant represents and warrants that it has no knowledge of any possible or pending litigation, arbitration, or any other claims against it as of the execution of this Agreement.

**SECTION 6.14 GOOD FAITH, BEST EFFORTS AND DUE DILIGENCE.** Merchant shall conduct its business in good faith and will use its best efforts to maintain and grow its business, to ensure that Purchaser obtains the full Purchased Amount. Furthermore, Merchant covenants, warrants and represents that Merchant will constantly perform all appropriate Due Diligence and credit checks of all of the customers' finances, cash flow, solvency, good faith, payment histories and business reputations (the "Due Diligence Requirements") as may be commercially reasonable to ensure any and all products and/or services provided, sold or delivered by Merchant to said customers will be paid for by customers in full and on time, and will not result in the creation of an unpaid account. This is not a guaranty of payment by Merchant's customers, but is an obligation of commercially reasonable Due Diligence investigation and credit check of customers before extending credit to them and continuing no less frequently than monthly so long as sums are still due.

**SECTION 6.15 FINANCIAL CONDITION AND FINANCIAL INFORMATION.** Merchant's and Guarantor(s)'s bank and financial statements, copies of which have been furnished to Purchaser, and future statements that will be furnished hereafter at the request of Purchaser, fairly represent the financial condition of Merchant and Guarantor(s) at such dates, and since those dates there has been no material adverse changes, financial or otherwise, in the condition, operation or ownership of Merchant. Merchant and Guarantor(s) have a continuing, affirmative obligation to advise Purchaser of any material adverse change in their financial condition, operation or ownership. Purchaser may request statements at any time during the performance of this Agreement and Merchant and Guarantor(s) shall provide them to Purchaser within five (5) business days. Merchant's or Guarantor(s)'s failure to do so is a material breach of this Agreement.

**SECTION 6.16 REQUIRED NOTIFICATIONS.** Merchant shall give Purchaser written notice within twenty-four (24) hours of any filing under Title 7, 11, or 13 of the United States Code.

## ARTICLE 7: REMEDIES

**SECTION 7.1 BREACH.** In the event of any breach or inaccuracy of any representation or warranty made by Merchant in this Agreement, or in any certificate or other document delivered by or on behalf of Merchant pursuant to this Agreement; or any breach or default in the performance by Merchant of any covenant or agreement contained in this Agreement, or in any certificate or other document delivered by or on behalf of Merchant pursuant to this Agreement (any of the foregoing a "Breach"), Purchaser shall be entitled to all remedies available under this Agreement, under Article 9 of the Uniform Commercial Code or other applicable law. Merchant and Guarantor further expressly acknowledge, consent, and understand that in the event of a breach of this Agreement, Purchaser shall have the right to enter a Confession of Judgment in accordance with Iowa law in the form annexed to this Agreement.

**SECTION 7.2 NO ACCESS.** In the event that Purchaser cannot access the Bank Account because of a Breach, Purchaser will be entitled to charge Merchant an estimated Daily payment, plus a \$50.00 fee for each day Purchaser does not have access to the Bank Account.

**SECTION 7.3 DAMAGES.** In the event that Merchant breaches any of the covenants in Section 6.1, Merchant agrees that Purchaser will be entitled to, among other things, damages equal to the amount by which the cash attributable to the Purchased Amount of Future Sale Proceeds exceeds the amount of cash

received from the Future Sale Proceeds that have previously been received by Purchaser under this Agreement.

**SECTION 7.4 AUTOMATIC DEBIT.** Merchant hereby agrees that Purchaser may automatically debit any such damages from any of Merchant's Bank Accounts via ACH, electronic check or wire transfer, and/or may notify the Credit Card Processor to remit to Purchaser any and all amounts received by the Credit Card Processor to satisfy the full amount of the then outstanding balance of the Purchased Amount. In addition, and to the extent not prohibited by applicable law and any agreements between Merchant's Credit Card Processor and the applicable Credit Card association, Purchaser and Merchant's Credit Card Processor shall be authorized to place Merchant on any "Terminated Merchant File" list with any applicable Credit Card association in the event of a breach by Merchant of Section 6.1. Further, Purchaser shall be entitled to collect all indemnified amounts from Merchant in accordance of Article 14 of this Agreement.

**SECTION 7.5 NO EXCLUSIVITY.** No remedy of the parties under Article 7 shall be exclusive of any other remedy herein or provided by law, but each shall be cumulative and in addition to each and every other remedy. Waiver of a default shall not be a waiver of any other or subsequent default.

#### **ARTICLE 8: NO RIGHT TO REPURCHASE**

Merchant acknowledges that it has no right to repurchase the Future Sale Proceeds from Purchaser.

Assignment. FNX may assign, transfer or sell its rights under this Agreement or delegate its duties hereunder, either in whole or in part, in its sole discretion without prior notice to Merchant.

#### **ARTICLE 9: NOTICES**

All notices which may be given under any provision of this Agreement shall be in writing and deemed to have been duly given when served personally or mailed by an express mail or courier service, first class mail, postage prepaid, and properly addressed to the parties at their addresses written on Page One (1) of this Agreement, or to such other address as each of the parties may designate in writing to the other parties in the manner provided in Article 9, together with copies.

#### **ARTICLE 10: MODIFICATIONS; AMENDMENTS**

This Agreement is the entire Agreement between the parties and supersedes any and all prior oral and/or written agreements and understandings by and among the parties with respect to the subject matter of this Agreement, and this Agreement may not be changed, modified or terminated orally, and no changes, modification, termination or attempted waiver shall be valid unless in writing and signed by the parties against whom the same is sought to be enforced.

#### **ARTICLE 11: BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of Merchant, Purchaser and their respective successors and assigns, except that Merchant shall not have the right to assign its rights under this Agreement or any interest in this Agreement without the prior written consent of Purchaser, which consent may be reasonably withheld in Purchaser's sole discretion. Purchaser reserves the right to assign this Agreement with or without prior written notice to Merchant.

#### **ARTICLE 12: APPLICABLE LAW; CONSTRUCTION**

This Agreement shall be construed and enforced in accordance with the internal laws and not the conflict of laws of the State of New York applicable to agreements made and to be performed in such State. The parties hereto have participated jointly in the drafting of this Agreement and the documents to be delivered in connection therewith. In the event of ambiguity or questions of intent or interpretation, this Agreement and the documents to be delivered in connection therewith shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

#### **ARTICLE 13: WAIVER**

Waiver by any party of any breach of this Agreement or failure to exercise any right under this Agreement shall not be deemed a waiver of any other or subsequent default, breach or right. The failure of any party to take action by reason of any such breach or to exercise any such right shall not deprive such party the right to take action at any time while such breach or condition giving rise to such right continues.

#### **ARTICLE 14: INDEMNIFIED AMOUNTS**

Merchant and Guarantor(s) shall assume liability for and do hereby agree to indemnify, protect, save, and keep harmless Purchaser and its agents, representatives, and servants, from and against any and all liabilities, claims, losses, obligations, damages, penalties, actions, and suits of any kind and nature imposed on, incurred by or asserted by third parties against Purchaser or its agents, representatives, and servants, in any way relating to or growing out of such breach (collectively "**Indemnified Amounts**"), including, without limitation, the payment of all costs and expenses of every kind for the enforcement of Purchaser's rights and remedies under this Agreement, including attorneys' fees and costs in any Trial Court or Appellate Court proceeding, any administrative proceeding, any arbitration or mediation, or any negotiations or consultations in connection with this Agreement. Such Indemnified Amounts shall bear interest at the highest rate of interest allowed by applicable law until paid.

#### **ARTICLE 15: JURISDICTION AND VENUE**

In the event of a controversy arising out of the interpretation, construction, performance or breach of this Agreement, the parties hereby agree and consent to the jurisdiction and venue of the courts of the State of New York to resolve any and all claims arising out of, relating to or in connection with this agreement or the relationship between the parties; and further agree and consent that personal service of process outside of the State of New York in any such action or proceeding shall be tantamount to service in person within the State of New York. Merchant and Guarantor expressly and irrevocably submit to the jurisdiction of the courts of the State of New York. So far as is permitted under the applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process, shall be necessary in order to confer jurisdiction upon the person of Merchant and/or Guarantor in any such court. ADDITIONALLY, MERCHANT AND GUARANTOR AGREE THAT ANY SUMMONS AND/OR COMPLAINT OR OTHER PROCESS TO COMMENCE ANY LITIGATION BY PURCHASER WILL BE PROPERLY SERVED IF MAILED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE MAILING ADDRESS(ES) LISTED ON PAGE 1 OF THIS AGREEMENT OR IN ACCORDANCE WITH THE WAIVER OF PERSONAL SERVICE ADDENDUM TO THIS AGREEMENT.

Without in any way limiting the foregoing, in the event of default, as determined by Purchaser in its sole discretion, Merchant and Guarantor consent and agree to the entry of judgment by confession in the form annexed to this Agreement in the State of New York and/or Iowa. Merchant and Guarantor hereby agree and consent to the jurisdiction of the State of Iowa in connection with the entry of the Confession of Judgment.

#### **ARTICLE 16: ENTIRE AGREEMENT**

This agreement, and any addendum hereto, together with any Credit Card processing agreement contains the entire Agreement and understanding between Merchant and Purchaser and supersedes all prior agreements and understandings relating to the subject matter hereof unless otherwise provided herein.

#### **ARTICLE 17: SURVIVAL OF REPRESENTATIONS, WARRANTIES, AND COVENANTS**

All representations, warranties and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have been terminated.

#### **ARTICLE 18: DISCLAIMER OF WARRANTIES**

No representations, warranties or promises pertaining to this Agreement or the transactions contemplated thereby have been made or shall be binding on any party hereto except as expressly stated in this Agreement.

#### **ARTICLE 19: MERGER; DISCLAIMERS**

All understandings and agreements heretofore made between the parties hereto are merged in this Agreement. In the making and execution of this Agreement, neither Merchant nor Purchaser have relied upon, or have been induced by any statements or representations, or promises, other than those expressly set forth in

this Agreement. Merchant and Purchaser have relied solely on the representations expressly made herein and on such investigations, examinations and inspections, financial or otherwise, as Merchant and Purchaser have respectively chosen to make or have made.

#### **ARTICLE 20: JURY TRIAL**

The parties and the guarantor hereby waive trial by jury in any court presiding over any suit, action or proceeding on any matter arising out of or in connection with or in any way related to the transactions of which this agreement is a part of the enforcement hereof, unless such waiver is prohibited by law or deemed by a court of law to be against public policy. The parties and the guarantor hereby acknowledge that each makes this waiver knowingly, willingly and voluntarily and without duress. The parties and the guarantor have been given ample time and opportunity to seek advice of counsel prior to the execution of this agreement and this waiver of trial by jury.

#### **ARTICLE 21: HEADINGS**

The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms and provisions of this Agreement.

#### **ARTICLE 22: COUNTERPARTS**

This Agreement shall be executed in counterparts, each of which so executed shall be deemed an original and constitutes one and the same Agreement.

#### **ARTICLE 23: INVALIDITY**

If any of the provisions of this Agreement are held invalid, such invalidity shall not affect the other provisions hereof, which can be given effect without the invalid provisions, and for this end the provisions of this Agreement are intended to be and shall be deemed severable.

#### **ARTICLE 24: EVENTS OF DEFAULT AND REMEDIES**

**SECTION 24.1 EVENTS OF DEFAULT.** The occurrence of any of the following events shall constitute an "Event of Default": a) Merchant interferes with FNX's right to collect the Daily Payment (and payment for arrears, if any) in violation of this Agreement; b) Merchant violates any term or covenant in this Agreement; c) Any representation or warranty by the Merchant in this agreement proves to have been incorrect, false, or misleading in any material respect when made; d); f) Merchant transports, moves, interrupts, suspends, dissolves or terminates its business for any reason other than a material decrease in business; g) Merchant transfers or sells all or substantially all of its assets; h) Merchant makes or sends notice of any intended bulk sale or transfer by Merchant; i) Merchant uses multiple depository accounts without the prior written consent of FNX; j) Merchant performs any act that reduces the value of any collateral granted under this Agreement; k) Merchant takes additional funding at any point after being funded by FNX without prior notice to and consent by FNX; l) Merchant utilizes a third-party debt restructuring company, attorney or service at any point after being funded by FNX without prior notice to and consent by FNX; m) Merchant defaults under any of the terms, covenants and conditions of any other agreement with FNX.

**SECTION 24.2 REMEDIES.** If any Event of Default occurs, FNX may proceed to protect and enforce its rights including but not limited to the following:

- A. The specified percentage shall equal to 100%. The full uncollected Purchase Amount plus all fees (including legal fees) due under this Agreement and the attached Security Agreement will become due and payable in full immediately.
- B. FNX may enforce the provisions of the Personal Guarantee of Performance against the Guarantor.
- C. Merchant and Guarantor hereby authorize FNX to enter the Confession of Judgment for the full uncollected Purchased Amount plus applicable default fees in the form annexed to this Agreement and execute thereon.
- D. FNX may enforce its security interest in the Collateral identified in the Security Agreement and Guaranty.
- E. FNX may proceed to protect and enforce its rights and remedies by lawsuit. In any such lawsuit, under which FNX shall recover Judgment against Merchant, Merchant shall be liable for all of FNX's costs of the lawsuit, included to but not limited to all reasonable attorney's fees and court costs.
- F. This agreement shall be deemed Merchant's Assignment of Merchant's Lease of business premises to FNX. Upon an Event of Default, FNX may exercise its rights under this Agreement of Lease without prior notice to Merchant.
- G. FNX may debit Merchant's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Merchant's bank account or otherwise for all sums due to FNX.
- H. Merchant shall pay to FNX all reasonable costs associated with the Event of Default and the enforcement of FNX's remedies set forth above, including but not limited to court costs and attorneys' fees.

All rights, powers and remedies of FNX in connection with this agreement may be exercised at any time by FNX after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

**SECTION 24.3 REQUIRED NOTIFICATIONS.** Merchant is required to give FNX written notice within twenty-four (24) hours of any filing under Title 11 of the United States Code. Merchant is required to give FNX seven (7) days' written notice prior to the closing of any sale of all or substantially all of the Merchant's assets of stock.



**AUTHORIZATION AGREEMENT****FOR AUTOMATIC CLEARING HOUSE (ACH) TRANSACTIONS**

This ACH Authorization Agreement is entered into pursuant to the Future Receivables Purchase Agreement dated **10/10/2023** (the “**Agreement**”) between the undersigned Sky Bar & Grill LLC (“**Merchant**”) and Fenix Capital Funding, LLC (hereinafter FNX). Terms used and not defined herein will have the meanings assigned to such terms in the Agreement. The undersigned Merchant hereby authorizes FNX to initiate recurring (debit or credit) entries to Merchant’s main checking/saving deposit account at the bank named below (the “**Bank**”). Merchant acknowledges that the origination of ACH or Electronic Check transactions to its account must comply with the provisions of applicable law. Furthermore, if any such ACH or Electronic Check transaction should be returned for non-sufficient funds (“**NSF**”), Merchant authorizes FNX to attempt to collect such amounts by an ACH or Electronic Check, as well as, at FNX’s discretion, to collect a fee of **\$50.00** per each returned item by an electronic transaction from the Merchant’s account identified below. The ACH debits will be recurring over the course of the business week (5 processing days, Monday through Friday). Should the current week include a **non-processing day**, as indicated by the bank’s inability to process any scheduled transactions on that specific day due to a holiday, the following business day will contain 2 or more ACH transactions, one for that specific processing day, as well as an additional ACH for each of the previous, consecutive non-processing days in the current weekly schedule.

Fenix Capital Funding, LLC will be entitled to debit **11 %** of the combined Future Sale Proceeds from credit card, transaction card, bank card and/or other charge card (collectively “**Credit Card**”) transactions based upon account settlement/funding data provided by Merchant’s credit card processor or another authorized third party (hereinafter “**Authorized Party**”). Similarly, at the time FNX cannot, for any reason, obtain access to the Merchant’s bank account via an online access, FNX shall debit the Daily Transfer Amount (initially set at **\$ 225.00**, and designated “**Estimated Payment**”) from the Merchant’s Bank Account. FNX reserves the right to collect the specified percentage of the Future Sale Proceeds from either, or both, the Credit Card and the Bank Account, as it sees fit, to satisfy the Merchant’s obligations. The Authorized Party is specifically authorized to provide FNX (1) any and all information and data relating to Merchant’s Bank Account and transactions processed by any of its merchant credit card processors, including but not limited to, all information relating to such accounts and transactions that any of its merchant credit card processors make available to Merchant; (2) access to all internet/web information, reporting and account information, but not limited to, all transactions and all such other information that would be available to the Merchant as may be requested by FNX; (3) all information relating to Merchant and its operations, including but not limited to its ownership, control, and any changes in its business or credit card processing activities, including the reduction or expansion of the overall processed volume. Merchant agrees that it will not change the account name, password or other access information for its accounts with Authorized Party without giving FNX at least 5 business days prior written notice of such change, or in case the change was unintentional by the Merchant, immediate notice of change, along with the proof that such a change was unintended by the Merchant.

**Merchant’s Account Name and Password for the website of Authorized Party**Website: www.\_\_\_\_\_Account Name: \_\_\_\_\_Password: \_\_\_\_\_

\*Please note that following the completion of the initial login procedure, in the event FNX cannot access your account for any reason, we will take an estimated transaction amount, in addition to a **\$50.00** fee for each day the access is not available.

This authorization shall remain in effect until the sooner of the following two events takes place; (a) such time that FNX has received the total of the Purchase Amount under the Agreement, or (b) FNX has delivered to the Authorized Party written revocation of this authorization. The individual signing this authorization on behalf of the Merchant certifies to FNX that he or she is a duly authorized check signer of the financial institution account identified below; that he or she is authorized to enter into this authorization on behalf of the Merchant, and that Merchant will be bound by all of the terms of this authorization. Merchant further agrees that a breach of this authorization will constitute a “**Breach**” of this Future Receivables Purchase Agreement.

**Merchant’s Legal Business Name: Sky Bar & Grill LLC**Merchant’s Credit Card Processor name: \_\_\_\_\_. Merchant Identification Number (MID): \_\_\_\_\_.**Purchased Percentage of the Combined Future Sales Proceeds: 11 %.**

**Estimated ACH Amount (calculated from the Purchased Percentage, and based on the previous reporting of the Future Sale Proceed, provided by the Merchant, and calculated as an average value over course of several prior months): \$ 225.00.**

\*The Estimated ACH Amount, to be debited from the Merchant’s bank account, is ONLY utilized at the time the Merchant is unable, or unwilling, to grant to FNX the internet/web access to the bank account, and any correlating reporting.

Signature: Date: 10/11/2023Printed Name: **Ebbie D Herbert**Signature: Date: 10/11/2023Printed Name: **Antjuan D Herbert**

**INFORMATION DISCLOSURE LETTER**

I/We grant irrevocable permission to release our confidential information to and/or its affiliated companies. I/We understand this information is being used by Fenix Capital Funding, LLC for credit/underwriting policy only.

**MERCHANT INFORMATION**

Legal Business Name: <b>Sky Bar &amp; Grill LLC</b>		DBA: <b>Sky Bar &amp; Grill</b>		
Entity Type: Limited Liability Company	Federal Tax ID: [REDACTED]	State Of Incorporation: [REDACTED]		
Date Business Started: 11/20/2018	Monthly Average Sales \$ 40,292.29	Annual Sales: \$ 483,507.48		
Physical Address:	Street: 15350 Fenkell Ave	City: Detroit	State: MI	Zip: 48227
Mailing Address:	Street:	City:	State:	Zip:
Contact Name: <u>Ebbie D Herbert</u>		Position:		
[REDACTED]				

**LANDLORD INFORMATION**

Do you own the property at your place of business? Rent Own ☒ Landlord Name N/A Landlord Phone N/A  
 What is your monthly (Mortgage/Rent) payment? \$ N/A . Is anyone else co-signed on your lease or mortgage? Yes No ☒  
 If LEASING when did your lease term begin? N/A . When does it expire? N/A  
 Are you current on your rent or mortgage? Yes No ☒ . If you are NOT current what is your outstanding balance? \$ N/A  
 What account do you pay your business rent/mortgage out of? Business Bank Account # [REDACTED] Personal Bank Account # [REDACTED]  
 Permission is also granted to contact any business past, present, or future, we may deal with including Banks, Landlords, and insurance companies we currently use or will use in the future.

**VERIFICATION OF THIS AUTHORIZATION MAY BE CONFIRMED BY CALLING THE BUSINESS AT:** N/A  
 (BUSINESS TELEPHONE NUMBER)

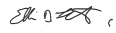
**MERCHANT VERIFICATION FORM:**


- |  |     |  |
|--|-----|--|
| • Do you currently have or within the last 90 days had any intentions, plans, or discussions regarding closing your Business?  | YES | NO <input checked="" type="checkbox"/> |
| • Do you currently have or within the last 90 days had any intentions, plans or discussions to change the name, legal structure of the business, or the ownership structure? | YES | NO <input checked="" type="checkbox"/> |
| • Are you currently in, or contemplating personal bankruptcy?  | YES | NO <input checked="" type="checkbox"/> |
| • Are you currently in, or contemplating business bankruptcy?  | YES | NO <input checked="" type="checkbox"/> |
| • Do you have any existing merchant cash advances?   | YES | NO <input checked="" type="checkbox"/> |
| • Is your business currently for sale?   | YES | NO <input checked="" type="checkbox"/> |
| • Are you involved in any litigation proceedings or are party to any lawsuit currently taking place?   | YES | NO <input checked="" type="checkbox"/> |

If you have answered YES to any of the above questions, please explain below: N/A

I, Ebbie D Herbert, hereby certify that the above statements are true and correct to the best of my knowledge. I authorize my landlord and credit card processor to discuss confidential account information for the purpose of satisfying the requirements of Fenix Capital Funding, LLC.

Completed and attested by:

  
 Signature: Ebbie D Herbert  
 Date: 10/11/2023

  
 Signature: Antjuan D Herbert  
 Date: 10/11/2023

**SKY BAR & GRILL LLC**  
**DBA: SKY BAR & GRILL**

**APPENDIX A: FEE STRUCTURE AND EXPLANATIONS**

- **Origination Fee:** This is the fee paid by the MERCHANT/GUARANTOR to Fenix Capital Funding, LLC to cover the costs of underwriting. This fee is designated in the agreement as a Processing Fee, and is set at **\$ 600.00**. The fee includes the cost of credit reports, site inspection fees, and other administrative costs.
- **Funding Fee:**  
**\$45.00**-For same day wire transfer.
- **Bank Change Fee:** **\$100.00**—Applied if the MERCHANT/GUARANTOR requires a change of Bank Account to be debited, requiring FNX to adjust the schedule of the series of debits within the billing system used at the time.
- **NSF/Rejected ACH Fee:** **\$50.00** per occurrence---The MERCHANT/GUARANTOR shall be required to pay this fee for each ACH debit that is not covered by either the Merchant or the bank, regardless of the reason. At Fenix Capital Funding, LLC's discretion, this agreement MAY be considered a default following the FNX bank report of **4 Consecutive NSFs**,
- **ACH Block on Account:** **\$2,500.00** — Applied if the MERCHANT/GUARANTOR places an ACH block on their account preventing FNX from processing its ACH debits. At FNX's discretion, the receipt of this report MAY be considered an automatic default of this agreement.
- **Default Fee:** **\$7,500.00**--- Applied if the MERCHANT/GUARANTOR changes the bank account or intentionally diverts receivables collections to another account, preventing Fenix Capital Funding, LLC from receiving payments.
- **Administration Fee:** **\$ 3,500.00** – Applied if the MERCHANT/GUARANTOR breaches the terms of the Future Receivable Purchase Agreement and/or the Guaranty and resort to judicial intervention is required due to continuing non-compliance by MERCHANT/GUARANTOR.
- **3<sup>rd</sup> Party Intermediary/Debt Restructuring Fee:** **\$7,500.00** — Used as deposit toward reasonable related expenses incurred by FNX. If FNX receives a communication from a 3rd party debt relief/negotiator entity or an individual, either of whom which have been retained by the MERCHANT/MERCHANT and who contacts FNX on MERCHANT/GUARANTOR's behalf seeking to redirect communication (related to the obligations contained in this Agreement) to itself/themselves and away from MERCHANT/GUARANTOR. This fee shall be used to cover FNX's reasonable expenses in retaining counsel, or a related other third party, to handle the additional administration required by this retention by MERCHANT/GUARANTOR. Any portion of the fee that is not used by FNX for this purpose shall be returned to MERCHANT/GUARANTOR or the intermediary, at the conclusion of this Purchase Agreement's term, or a related legal action.
- **Additional Funding/ "Stacking" Fee:** **15% of Initial Purchase Price** — As a result of the MERCHANT/GUARANTOR taking additional funding at any point after being funded by Fenix Capital Funding, LLC, without prior notice to and consent by Fenix Capital Funding, LLC, a fee amounting to 15% of the amount of the advance shall automatically be added to the payback amount of the advance. Fenix Capital Funding, LLC reserves the right to declare the account in default, at any point after learning such **"stacking"** has occurred; regardless of the payments made by the MERCHANT/GUARANTOR, by filing the Confession of Judgment in a court of competent jurisdiction.
- **Collections Expense:** In the event of default, MERCHANT/GUARANTOR shall be responsible for all reasonable costs of collections, including, but not limited to, counsel fees, filing fees and any other fees applicable fees incurred during the process.
- **UCC Fee:** **\$195.00**. Includes the initial filing, and removal of the UCC-1 filing, completed immediately post-funding, unless otherwise specified by FNX.
- **Miscellaneous Service Fees:** MERCHANT/GUARANTOR shall pay certain fees for services related to the origination and maintenance of the accounts. Beginning on the first of each month following the initial funding, and continuing until such a time the Purchased Amount has been collected in full, the MERCHANT/GUARANTOR shall pay a monthly fee of **\$ 49.00**. Each MERCHANT/GUARANTOR shall receive their funding electronically to their designated bank account and will be charged **\$45.00** for the

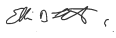
initial Fed Wire. The current charge for the underwriting, UCC, ACH Program and Origination of each MERCHANT/GUARANTOR will be paid from the funded amount. MERCHANT/GUARANTOR will be charged **\$100.00** for every additional change of their operating bank account once they are active with FNX. Additional copies of prior monthly statements will incur a fee of **\$25.00** each.


**APPENDIX A: FEE STRUCTURE AND EXPLANATIONS (CONTINUED)**

**NOTE:** FENIX CAPITAL FUNDING, LLC RESERVES THE RIGHT TO ADD ANY OR ALL OF THE APPLICABLE FEES AT ITS SOLE DISCRETION, AS APPLICABLE, ON A CASE-BY-CASE BASIS. FENIX CAPITAL FUNDING, LLC FURTHER RESERVES THE RIGHT TO RECOVER THE FEES AS THEY BECOME DUE IMMEDIATELY UPON MERCHANT INCURRING SAME OR, IN ITS SOLE DISCRETION, TO ADD THE INCURRED FEES TO THE TOTAL AMOUNT DUE UNDER THE AGREEMENT.

**BUSINESS NAME:** Sky Bar & Grill LLC

**DBA:** Sky Bar & Grill

 10/11/2023 / Ebbie D Herbert  
Signature Date

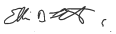
 10/11/2023 / Antjuan D Herbert  
Signature Date


**ACKNOWLEDGEMENT**

We, Ebbie D Herbert and Antjuan D Herbert hereby acknowledge:

- There has been no promise of additional capital post funding by FNX or any ISO (broker). According to our policy, the Merchant(s) are to contact FNX, either directly or through an ISO, anytime they require additional capital.
- That FNX does not permit outside fees and that no one has discussed additional fees with me. The fee amount for this agreement is \$ 600.00, which will be held back from the funding amount.
- There has not been and will not be at any point, any contact from Third Party debt companies regarding this Future Receivables Purchase Agreement dated 10/10/2023

We, the undersigned, acknowledge that we are in agreement with these items, which are also described in detail within the pages of this document.

 10/11/2023 / Ebbie D Herbert  
Signature Date

 10/11/2023 / Antjuan D Herbert  
Signature Date

## ADDENDUM TO AGREEMENT# 280205

WAIVER OF PERSONAL SERVICE

This Addendum ("Addendum") is to be made a part of the purchase and sale of future receivables agreement (the "Agreement") between Fenix Capital Funding, LLC ("Purchaser") and Sky Bar & Grill LLC /DBA: Sky Bar & Grill ("Merchant") and Ebbie D Herbert, and Antjuan D Herbert, ("Guarantor"), (collectively by "Parties") dated 10/6/2023.

1. Merchant hereby irrevocably and unconditionally waives personal service of any summons, complaint, or other process, which may be made by other means permitted by law. Merchant understands and agrees that any action, lawsuit, or controversy may be taken up and considered by a court without any further notice. Merchant further agrees to waive any objection to the absence of formal service of process.
2. Guarantors hereby irrevocably and unconditionally waive personal service of any summons, complaint, or other process, which may be made by any other means permitted by New York law. Guarantors understand and agree that an action, lawsuit or controversy may be taken up and considered by a court without any further notice. Guarantors further agree to waive any objection to absence of formal service of process.
3. MERCHANT HEREBY AGREES TO ACCEPT SERVICE OF ANY SUMMONS, COMPLAINT, OR OTHER PROCESS BY ELECTRONIC MAIL ("EMAIL") AT ebbieherbert@hotmail.com OR BY UNITED STATES POSTAL SERVICE AT 15350 Fenkell Ave, Detroit, MI, 48227 OR BY ANY OTHER MEANS PERMITTED BY NEW YORK LAW.
4. GUARANTOR, Ebbie D Herbert, HEREBY AGREES TO ACCEPT SERVICE OF ANY SUMMONS, COMPLAINT, OR OTHER PROCESS BY ELECTRONIC MAIL ("EMAIL") AT ebbieherbert@hotmail.com OR BY UNITED STATES POSTAL SERVICE AT 31262 Huntley Square E #1214, Beverly Hills, MI, 48025 OR BY ANY OTHER MEANS PERMITTED BY NEW YORK LAW.
5. GUARANTOR, Antjuan D Herbert, HEREBY AGREES TO ACCEPT SERVICE OF ANY SUMMONS, COMPLAINT, OR OTHER PROCESS BY ELECTRONIC MAIL ("EMAIL") AT antjuanherbert013@gmail.com OR BY UNITED STATES POSTAL SERVICE AT 18627 Mark Twain St, Detroit, MI, 48235 OR BY ANY OTHER MEANS PERMITTED BY NEW YORK LAW.
6. Merchant or Guarantors shall notify Purchaser of any changes to its physical address or email address for service. Unless Purchaser is notified of a change of address, all addresses shall be presumed to be accurate.
7. This Addendum shall supersede any notice requirements in the Agreement with respect to service of process.

## For the Personal Guarantor

## For the Merchant

 10/11/2023

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Name: Ebbie D Herbert

 10/11/2023

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Name: Ebbie D Herbert,

Title: Owner

## For the Personal Guarantor2

 10/11/2023

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name: Antjuan D Herbert

Initial Here: Edh AH

**CROSS-COLLATERAL ADDENDUM TO CONTRACT# 280205**

This Cross-Collateral Addendum to the FUTURE RECEIVABLES PURCHASE AGREEMENT # 280205, dated 10/6/2023 (the “Agreement”), by and between Fenix Capital Funding, LLC, (“Purchaser”) and Sky Bar & Grill LLC /DBA: Sky Bar & Grill, (“Merchant”) and Ebbie D Herbert and Antjuan D Herbert (“Guarantor”). This Addendum is an integral part of the Agreement.

This Addendum is hereby incorporated in and shall be a part of the Agreement. If and to the extent that any of the provisions of this Addendum conflict or are otherwise inconsistent with any of the terms and conditions of the Agreement, the provisions of this Addendum shall control to the extent necessary to resolve such conflict or inconsistency. No other terms or conditions of the Agreement not hereby otherwise modified or amended shall be negated or changed as a result of this Addendum. All capitalized terms shall have the same meanings as in the Agreement:

**1.** In accordance with the Future Receivable Purchase Agreement and Guaranty, Merchant and/or Guarantor acknowledge and agree that each of the following businesses and/or individuals (“Cross-Collateral Entities”) shall be jointly and severally liable to Purchaser for the total aggregate Purchased Amount, as set forth in any and all Future Receivable Purchase Agreement entered into between Merchant and Purchaser, and/or the parties hereto, now or hereafter executed.

**2.** Cross Collateral Entities hereby irrevocably and unconditionally waive personal service of any summons, complaint, or other process, which may be made by other means permitted by law. Cross Collateral Entities further agrees to waive any objection to the absence of formal service of process. CROSS-COLLATERAL ENTITIES HEREBY AGREES TO ACCEPT SERVICE OF ANY SUMMONS, COMPLAINT, OR OTHER PROCESS BY ELECTRONIC MAIL (“EMAIL”) TO THE EMAIL ADDRESSES LISTED BELOW OR BY UNITED STATES POSTAL SERVICE OR BY ANY OTHER MEANS PERMITTED BY NEW YORK LAW.

**3.** Cross-Collateral Entities hereby grant to Purchaser a continuing security interest in any and all future account receivables, General Intangibles, all instruments, securities, deposit accounts, computer programs, software, licenses, and permits, now or hereafter acquired, generated or earned by Cross-Collateral Entities, which shall secure Merchant’s obligations under the Agreement (the “Cross-Collateral”). Cross-Collateral Entities authorize Purchaser to file a UCC-1 Financing Statement to perfect its security interest in the Cross-Collateral. Cross-Collateral Entities further consent to the entry of a Confession of Judgment against them and in favor of Purchaser in the State of New York in the County where they reside or maintain their place of business, or the State of Iowa, County of Polk in the event Merchant violates any of the terms and conditions of the Agreement.

**4.** Cross Collateral Entities acknowledge and agree that the Agreement and this Addendum was made in the State of New York and that the State of New York has a reasonable relationship to the transactions encompassed herein. The Agreement and this Addendum and the relationship between Cross-Collateral Entities, the Merchant and each Guarantor will be governed by and construed in accordance with the laws of the State of New York, without regard to any applicable principles of conflict of laws. Cross-Collateral Entities expressly and irrevocably submit to the jurisdiction of the courts of the State of New York including the County of Kings and County of Niagara. Cross-Collateral Entities, the Merchant and Guarantor further consent and agree to the entry of a Confession Judgment in the State of Iowa in the form annexed to this Agreement. Cross-Collateral Entities, the Merchant and Guarantor hereby agree and consent to the jurisdiction of the State of Iowa in connection with the entry of the Confession of Judgment. So far as is permitted under the applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process, shall be necessary in order to confer jurisdiction upon the person of Cross-Collateral Entities in any such court.

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**5.** The Parties agree that Merchant remains the first obligor under the Agreement and, unless otherwise specified in the Agreement, the Specified Percentage and/or the Estimated Daily Payment shall be withdrawn or held back from Merchant's Designated Account or Designated Processor. In the event Merchant is unable to remit the Specified Percentage and/or the Estimated Daily Payment to Purchaser for any reason whatsoever, and/or Merchant violates the terms and conditions of the Agreement, the Cross-Collateral Entities shall thereafter assume all the obligations of Merchant to Purchaser.

**6.** Merchant hereby expressly acknowledges and agrees that in the event of default, Purchaser shall be entitled to exercise against Cross-Collateral Entities concurrently, successively, or selectively, any and all of the remedies contained in the Agreement, and may further realize upon the future account receivables of Cross-Collateral Entities hereto, and may apply the proceeds of the same against any liabilities or obligations of Merchant to Purchaser, and in such amount(s) as Purchaser in its sole opinion shall elect.

**7.** All the sums paid by Purchaser to the Merchant under the Agreement and under all other agreements constitute one transaction, and all rights and obligations of the Merchant and Purchaser under the Agreement, and under all other agreements, present and future, constitute one general obligation secured by collateral and security held and to be held by Purchaser hereunder and by virtue of all other agreements between Merchant and Purchaser now and hereafter existing. It is distinctly understood and agreed by Merchant that all of the rights of Purchaser contained in the Agreement shall likewise apply to Cross-Collateral Entities herein.

**8.** Guarantor represents and warrants to Purchaser as follows:

a Cross-Collateral Entities are duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, with the corporate power and authority to own and operate its business as presently conducted.

b Guarantor maintains a valid ownership interest in Cross-Collateral Entities and has the requisite power and authority to bind Cross-Collateral Entities and to execute, deliver and perform the obligations under this Addendum and to consummate the transactions contemplated hereby.

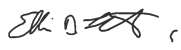
c This Addendum has been duly and validly executed and delivered by Guarantor on behalf of Cross-Collateral Entities and constitutes a legal, valid and binding obligation of Cross-Collateral Entities, in accordance with its terms.


9. Guarantor expressly agrees and understands that in the event it is in default of any representations and warranties set forth in paragraph 8, or if any of the representations set forth in paragraph 8 are not true and accurate in all respects when made or when otherwise required by this Addendum to be true and accurate, then such default and/or such event shall constitute an Event of Default under the Agreement and will entitle Purchaser to exercise such remedies as are provided for in the Agreement, including the remedies provided in this Addendum with no further notice to Merchant, Guarantor or Cross-Collateral Entities.


## CROSS COLLATERAL ENTITIES:

Legal Name	DBA	Address	City	State	Zip	Email	Tax ID
Ara Management, LLC	Ara Management, LLC	31262 Huntley Square E #1214	Beverly Hills	MI	48025	ebbieherbert@hotmail.com	
Alpha & Omega Heating And Cooling, LLC	Alpha & Omega Heating And Cooling, LLC	31262 Huntley Square E #1214	Beverly Hills	MI	48025	ebbieherbert@hotmail.com	
Virtual Venue, LLC	Virtual Venue, LLC	31262 Huntley Square E #1214	Beverly Hills	MI	48025	ebbieherbert@hotmail.com	
AD&H LLC	AD&H LLC	18627 Mark Twain St	Detroit	MI	48235	antjuanherbert013@gmail.com	

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the day and year first above written.

→   
 Signature \_\_\_\_\_ Date Signed 10/11/2023  
 Sky Bar & Grill LLC /DBA: Sky Bar & Grill  
**Merchant**

→   
 Signature \_\_\_\_\_ Date Signed 10/11/2023  
 Ebbie D Herbert  
**Guarantor**

→   
 Signature \_\_\_\_\_ Date Signed 10/11/2023  
 Antjuan D Herbert  
**Guarantor#2**

Ara Management, LLC, 31262 Huntley Square E #1214, Beverly Hills, MI, 48025  
 Alpha & Omega Heating And Cooling, LLC, 31262 Huntley Square E #1214, Beverly Hills, MI, 48025  
 Virtual Venue, LLC, 31262 Huntley Square E #1214, Beverly Hills, MI, 48025  
 AD&H LLC, 18627 Mark Twain St, Detroit, MI, 48235

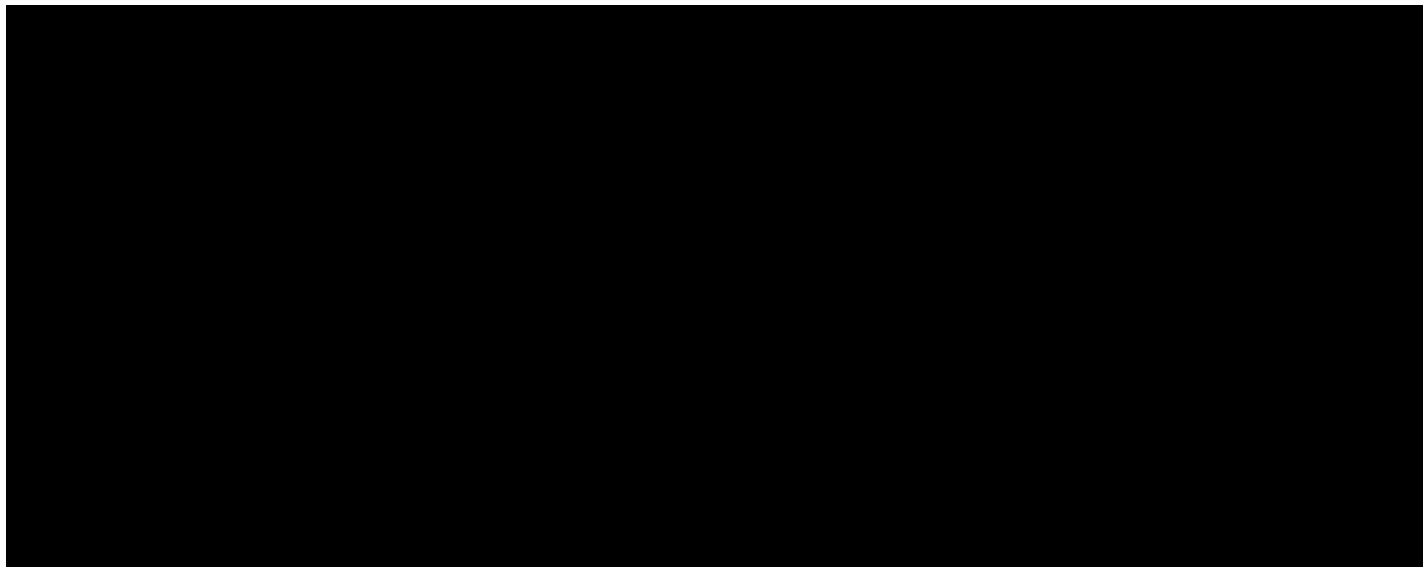
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## EMERGENCY CONTACT INFORMATION

(In case we cannot get in touch with you)

\*These references will NOT be contacted for any reason if you don't proceed further with funding and/or for any marketing and/or sales purposes.



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## DEPOSIT ACCOUNT CONTROL AGREEMENT

This Deposit Account Control Agreement ("Agreement") is entered on 10/10/2023 by and among Sky Bar & Grill LLC /DBA: Sky Bar & Grill, Ebbie D Herbert and Antjuan D Herbert ("Customer"), \_\_\_\_\_ ("Bank"), and Fenix Capital Funding, LLC, a New York limited liability company ("Secured Party").

### WITNESSETH

WHEREAS Customer and Secured Party entered into that certain Future Receivables Purchase Agreement dated August 15, 2023 (the "FRPA")

WHEREAS pursuant to the terms of the FRPA, Customer has granted to Secured Party a security interest in all deposit accounts and all financial assets and other property now or at any time hereafter held in the said deposit accounts (collectively, the "Deposit Account"); and

WHEREAS Secured Party, Customer and Bank have agreed to enter into this Agreement to perfect Secured Party's security interest in the Deposit Account.

NOW THEREFORE, in consideration of their mutual covenants and promises contained herein, the parties agree as follows:

1. **AGREEMENT FOR CONTROL.** Customer hereby authorizes any financial institution with which Customer maintains a deposit account and agrees to comply with all demands made by Secured Party with respect to the Collateral, without further consent or direction from Customer or any other party. Bank is authorized by Customer and agrees to comply with all demands made by Secured Party with respect to the Collateral, without further consent or direction from Customer or any other party. Collateral is defined to mean the Deposit Account, including all financial assets now or hereafter credited to the said account, and all replacements or substitutions or other disposition of any kind of the foregoing.

2. **STATUS OF THE ACCOUNT**

(a) The Bank and the Customer certify, acknowledge, and agree that as of the date of this Deposit Account Control Agreement: (i) the Collateral is maintained with the Bank; (ii) the Collateral is a "deposit account" (as that term is defined in section 9-102(a)(29) of the UCC); (iii) the Collateral is open and in good standing; (iv) the Customer is the sole depositor and the sole owner of the account; (v) the Collateral has no stated maturity date; (vi) the Collateral is not subject to any pledge, security interest, right of recoupment, or right of set off, other than the security interest granted to the Secured Party by this Deposit Account Control Agreement.

(b) The Customer certifies, acknowledges and agrees that (i) no funds now in the Collateral are proceeds in which any person or other entity (other than Secured Party) has a security interest or other lien of any kind; and (ii) no proceeds in which any person or entity (other than Secured Party) may have a security interest or other lien of any kind will be deposited into the Collateral at any time further.

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(c) The Bank certifies that (i) the Bank is a “bank” (as that term is defined in section 9-102(a)(8) of the UCC); and (ii) the Financial Institution has the State of New York as its jurisdiction for the purposes of section 9-304 of the UCC.

3. CUSTOMER’S RIGHTS WITH RESPECT TO THE COLLATERAL.

(a) Until Bank is notified otherwise by Secured Party, Bank may distribute to Customer or any other party in accordance with Customer’s directions any financial assets within the Deposit Account.

(b) Upon written notification to the Bank, without Secured Party’s prior written consent: (i) neither Customer nor any party other than Secured Party may withdraw any Collateral from the Deposit Account, and (ii) Bank will not comply with any request to withdraw any Collateral from the Deposit Account given by any party other than Secured Party.

(c) Upon written notification to the Bank, Bank shall not make any further distributions of any Collateral to any party other than the Secured Party except upon either written or oral notice from the Secured Party.

4. BANK’S REPRESENTATIONS AND WARRANTIES. Bank represents and warrants to Secured Party that:

(a) The Deposit Account is maintained with the Bank solely in Customer’s name.

(b) Bank has no knowledge of any claim to, security interest in or lien upon any of the Collateral, except: (i) the security interest in favor of the Secured Party, and (ii) Bank’s liens securing fees and charges as described in the last paragraph of this Section.

(c) Any claim to, interest in or lien upon any of the Collateral which Bank now has or at any time hereafter acquires shall be junior and subordinate to the security interest of Secured Party in the Collateral, except for Bank’s liens securing fees and charges owed by Customer with respect to the operation of the Deposit Account.

5. AGREEMENT OF BANK AND CUSTOMER. Bank and Customer agree that:

(a) Bank shall flag its books, records and systems to reflect Secured Party’s security interest in the Collateral and shall provide notice thereof to any party making inquiry as to Customer’s accounts with Bank to whom Bank is legally required or permitted to provide information.

(b) Bank shall send copies of all statements relating to the Deposit Account simultaneously to Customer and Secured Party.

(c) Bank shall promptly notify Secured Party if any other party asserts any claim to, security interest in or lien upon any of the Collateral and Bank shall not enter into any control, custodial, or other similar agreement with any other party that would create or acknowledge the existence of any such other claim, security interest or lien.

(d) Without Secured Party's prior written consent, Bank and Customer shall not amend or modify the agreement that relates to the Deposit Account, other than: (i) amendments to reflect ordinary and reasonable changes in Bank's fees and charges for handling the Deposit Account, and (ii) operational changes initiated by Bank as long as they do not alter any of Secured Party's rights hereunder.

(e) Neither Bank nor Customer shall terminate their agreement for the Deposit Account without giving thirty (30) days prior written notice to Secured Party.

6. **AGREEMENT OF CUSTOMER.** Customer agrees to indemnify and hold harmless Bank, its officers, directors, employees and agents, against claims, liabilities or expenses (including reasonable attorney's fees) arising out of Bank's compliance with any instructions from Secured Party with respect to the Deposit Account, except if such claims, liabilities or expenses are caused by Bank's negligence or willful misconduct.

7. **MISCELLANEOUS.**

(a) This Agreement shall not create any obligation or duty of Bank except as expressly set forth herein.

(b) As to the matters specifically the subject of the Agreement, in the event of any conflict between this Agreement and the Deposit Agreement or any other agreement between Bank and Customer, the terms of the Agreement shall control.

(c) All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing (unless otherwise specifically provided) and delivered to each party at the address set forth below or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made if sent by hand delivery or if sent by U.S. mail, postage prepaid.

(d) This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties.

(e) This Agreement shall terminate upon: (i) Bank's receipt of written notice from Secured Party expressly stating that Secured Party no longer claims any security interest in the Collateral, or (ii) termination of the Deposit Account pursuant to the terms hereof and Bank's delivery of all Collateral to Secured Party or its designee in accordance with Secured Party's written instructions.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

BANK:

SECURED PARTY:

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Fenix Capital Funding, LLC

By: \_\_\_\_\_

Name:

Title:

By: Alexander Ryvkin

Name: Alexander Ryvkin

Title: Chief Legal Officer

CUSTOMER:

Sky Bar & Grill LLC /DBA: Sky Bar & Grill

By: Ebbie D Herbert

Name: Ebbie D Herbert

Title: Owner

By: Antjuan D Herbert

Name: Antjuan D Herbert

Title: Owner





SIGNATURE CERTIFICATE



REFERENCE NUMBER  
6AA6B963-D7CF-4739-AC44-B5808C9770B1

TRANSACTION DETAILS	DOCUMENT DETAILS
<b>Reference Number</b> 6AA6B963-D7CF-4739-AC44-B5808C9770B1	<b>Document Name</b> Contract 280205 Sky Bar & Grill LLC
<b>Transaction Type</b> Signature Request	<b>Filename</b> MCA_Contract_IA2_CrossColl_280205.pdf
<b>Sent At</b> 10/10/2023 11:49 EDT	<b>Pages</b> 24 pages
<b>Executed At</b> 10/11/2023 16:38 EDT	<b>Content Type</b> application/pdf
<b>Identity Method</b> email	<b>File Size</b> 1.05 MB
<b>Distribution Method</b> email	<b>Original Checksum</b> b045f79eae211db3cb06a015118cd37360df8fe511a53019f474d253eca0a2ae
<b>Signed Checksum</b> 39c5af249b16fc2a3d7ae74dcf8227e542bb1d3b62659653bfadf4094281017b	
<b>Signer Sequencing</b> Disabled	
<b>Document Passcode</b> Disabled	

SIGNERS

SIGNER	E-SIGNATURE	EVENTS
<b>Name</b> Antjuan D Herbert	<b>Status</b> signed	<b>Viewed At</b> 10/11/2023 16:30 EDT
<b>Email</b> antjuanherbert013@gmail.com	<b>Multi-factor Digital Fingerprint Checksum</b> 176bd385b306f3e53c6b914a3150fc9800f0c0c5ca39df0c59ed54ccdb0bd010	<b>Identity Authenticated At</b> 10/11/2023 16:38 EDT
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	<b>Signature Reference ID</b> 35B859ED	
	<b>Signature Biometric Count</b> 2	
<b>Name</b> Ebbie D Herbert	<b>Status</b> signed	<b>Viewed At</b> 10/11/2023 14:23 EDT
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	<b>Device</b> Mobile Safari via iOS	
	<b>Drawn Signature</b> 	
	<b>Signature Reference ID</b> C36CF074	
	<b>Signature Biometric Count</b> 9	

AUDITS

TIMESTAMP	AUDIT
10/10/2023 11:49 EDT	Contracts Contracts (processing@fenixcapitalfunding.com) created document 'MCA_Contract_IA2_CrossColl_280205.pdf' on Chrome via Windows from 158.222.189.246.
10/10/2023 11:49 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) was emailed a link to sign.
10/10/2023 11:49 EDT	Ebbie D Herbert (ebbieherbert@hotmail.com) was emailed a link to sign.

<b>TIMESTAMP</b>	<b>AUDIT</b>
10/11/2023 10:37 EDT	Ebbie D Herbert (ebbieherbert@hotmail.com) was emailed a reminder.
10/11/2023 10:37 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) was emailed a reminder.
10/11/2023 13:58 EDT	Ebbie D Herbert (ebbieherbert@hotmail.com) was emailed a reminder.
10/11/2023 13:58 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) was emailed a reminder.
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10/11/2023 14:42 EDT	Ebbie D Herbert (ebbieherbert@hotmail.com) authenticated via email on Mobile Safari via iOS from 172.58.124.37.
10/11/2023 14:42 EDT	Ebbie D Herbert (ebbieherbert@hotmail.com) signed the document on Mobile Safari via iOS from 172.58.124.37.
10/11/2023 15:47 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) was emailed a reminder.
10/11/2023 15:47 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) was emailed a reminder.
10/11/2023 16:30 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) viewed the document on Mobile Safari via iOS from 172.58.124.175.
10/11/2023 16:36 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) was emailed a reminder.
10/11/2023 16:36 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) was emailed a reminder.
10/11/2023 16:38 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) authenticated via email on Mobile Safari via iOS from 172.58.125.169.
10/11/2023 16:38 EDT	Antjuan D Herbert (antjuanherbert013@gmail.com) signed the document on Mobile Safari via iOS from 172.58.125.169.