

Attachment A

Amendment No. One to Lease Agreement

**AMENDMENT NO. ONE TO
LEASE AGREEMENT BY AND BETWEEN
THE CITY OF NEWPORT BEACH AND
RUBY'S DINER, INC.**

THIS AMENDMENT NO. ONE TO LEASE AGREEMENT ("Amendment No. One") is made and entered into as of this 24 day of June, 2025 ("First Amendment Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("Lessor" or "City"), and HERITAGE RESTAURANT MANAGEMENT, INC., a California corporation ("Lessee" or "Tenant"). Lessor and Lessee are sometimes individually referred to herein as "Party" and collectively as the "Parties."

RECITALS

A. On July 1, 2000, Lessor and Ruby's Diner, Inc., a California corporation ("Ruby's"), entered into that certain Lease Agreement ("Lease") regarding a portion of the Balboa Pier property owned by Lessor, which is identified as the "Premises" in the Lease, for the operation of a restaurant business.

B. On November 12, 2010, Lessee purchased Ruby's restaurant business at the Premises and has since been operating the restaurant business.

C. The Parties desire to enter into this Amendment No. One to increase the number of options to extend, to adjust the base rent, to amend provisions regarding refuse collection, to amend the terms of maintenance and repair, and update insurance requirements and notice provisions under the Lease.

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:

1. TERM

The Parties desire to provide for a third Option Term under the Lease to facilitate Tenant's work and progress on a long term investment in the Premises with the intention of entering into a new, long term lease agreement. Accordingly, Section 3.2 (Option to Extend) of the Lease is amended in its entirety and replaced with the following:

"3.2. Option to Extend. Provided Tenant is not then in material default, Tenant may extend the term of this Lease for two (2) additional successive terms of five (5) years and then one (1) additional successive term of seven (7) years (the "Option Term" or "Option Terms"). Tenant may exercise an Option Term by giving City written notice of its intention to do so at least three (3) months prior to Expiration of the initial Term or preceding Option Term, if any."

The Parties further agree that the Tenant validly exercised its right to exercise its extension rights as to the first two (2) Option Terms, and that this Amendment No. One constitutes Tenant's valid and timely written notice of its exercise of the third seven (7) year Option Term.

2. RENT

Section 4.1(b) (Periodic Adjustment) of the Lease is amended in its entirety and replaced with the following:

“(b) Periodic Adjustment. On the eighth (8th), twelfth (12th) and, assuming Tenant’s exercise of the options to extend the Term, the sixteenth (16th), twentieth (20th), and twenty-fourth (24th) anniversaries of the Rent Commencement Date, the Base Rent shall be increased by the lesser of the cumulative percentage increase in the CPI or three percent (3%) per year. The cumulative percentage increase in the CPI shall be determined based on the increases during the period from the Rent Commencement Date or the date of the previous adjustment (whichever is appropriate) to the last date prior to the anniversary on which the CPI was published (typically the CPI for any given month is published approximately sixty (60) days after the end of that month). On July 1, 2025 (i.e., the twenty-fifth (25th) anniversary of the Rent Commencement Date), and on each successive anniversary of the Rent Commencement Date thereafter during the Option Term, the Base Rent shall be increased annually by three percent (3%) per year over the then-effective Base Rent as of such date.”

3. UTILITIES AND REFUSE COLLECTION

Section 7(b) (Refuse Collection) is amended in its entirety and replaced with the following:

“(b) Refuse Collection. Tenant shall keep the Premises free and clean of rubbish and litter and shall deposit “Municipal Solid Waste” (as the term is defined in Section 6.06.010 of the Newport Beach Municipal Code), recyclables, and organics in containers designated by City. Refuse containers shall be kept in approved and enclosed areas as set forth below:

- i. Maintenance. Tenant, at its sole cost and expense, shall maintain all enclosures in a clean and good condition. This includes pressure washing on a weekly basis and the prompt clean-up of all spills. Tenant shall provide the pressure washing schedule to the City. Tenant shall use environmentally safe measures to reasonably ensure no runoff or contamination to the sensitive ocean and beach environment in which the Premises exists.

- ii. Trash Enclosure. Tenant shall deposit all Municipal Solid Waste (e.g. garbage, trash, rubbish, etc.) exclusively in the refuse container located in the trash enclosure immediately adjacent to the Tenant's patio.
- iii. Recycling and Organics Enclosure. Tenant is responsible for constructing a new enclosure to secure containers for recycling and organic waste only ("New Enclosure"), at the concrete pad at the base of the Balboa Pier, as further depicted in Exhibit F, attached hereto and incorporated herein by reference. The design, dimensions, and permitting of the New Enclosure shall be subject to City review and approval, the construction of which shall be complete no more than one (1) year from the First Amendment Effective Date, subject to force majeure delays including delays in obtaining any necessary governmental approvals. Alternatively in City's sole discretion, City may construct the New Enclosure, the third party costs and staff time for which (not to exceed Fifty Thousand Dollars (\$50,000.00)) shall be charged to Tenant in addition to Rent or any other charged and shall not be used to offset any other Rents owed, Tenant shall promptly remit payment to the City for the costs of the New Enclosure within the later to occur of 60 days following completion of the New Enclosure or 60 days following demand by the City. The New Enclosure shall be used exclusively for Tenant and its operations, and Tenant shall have the right to secure (i.e. lock) the New Enclosure and otherwise prevent any third party from using the New Enclosure.
- iv. Tenant shall be responsible to secure the recycling and organics containers stored in the New Enclosure and Tenant shall only deposit recycling and organic waste in the containers designated for such waste. Tenant shall be responsible for bringing Tenant's recycling and organics containers to and from the New Enclosure and endeavor to do so early each morning.
- v. At City's discretion, City may cause the relocation of the refuse containers and point of collection to shared facilities within the adjacent Newport Beach Junior Lifeguard building.

- vi. Tenant shall be responsible for removing any debris or cleaning any trail left behind from carrying any refuse to and from the Premises, and Tenant shall be responsible for undertaking commercially reasonable efforts to ensure that any off-Premises trash enclosure is limited to Tenant's access only. Tenant shall implement and maintain all commercially reasonable measures required to prevent illegal dumping or use of the containers and enclosures.

Tenant shall pay City, in addition to any Rent or other charges, one hundred percent (100%) of the costs for refuse collection and service, in consideration of which City shall provide refuse collection and service, which scope of services shall be based on Tenant's needs. Tenant agrees that the City's Refuse Manager, at its reasonable discretion, may increase or decrease the number of collection days per week and adjust refuse collection fees accordingly, based upon Tenant's volume of Municipal Solid Waste, recyclable materials and organic waste generated. City shall provide an adequate amount of containers for Tenant's business operations. Alternatively, in accordance with state and local law, Tenant may procure and contract for Tenant's own refuse collection, the costs and scheduling of which Tenant shall be solely responsible, in which case Tenant shall not be obligated to pay City for those services which Tenant procured and contracted for from such third parties.

Tenant shall comply with the provisions of the State of California and local provisions, including the Newport Beach Municipal Code ("NBMC"), relative to the deposit of material to be collected by City."

4. MAINTENANCE OF PREMISES

Section 9.1 (Maintenance and Repair by Lessee and City) is amended in its entirety and replaced with the following:

"9.1 Maintenance and Repair by Tenant and City. Tenant agrees that it will keep the Premises in Good Condition. Tenant's Maintenance responsibilities include washing bird droppings and dirt off the Premises, including roof, windows and exterior walls as needed, but not less than once every ninety (90) days. Graffiti shall be removed or painted over by Tenant as soon as reasonably practicable. Tenant shall Maintain and perform repairs as necessary to the recycling and organics enclosure and Premises including but not limited

to the roof, windows, trash enclosure and all exterior work. City may perform Maintenance or repairs in the event Tenant fails to commence required Maintenance or repairs within three (3) business days after receipt of notice to do so. The cost of any Maintenance or repairs by the City pursuant to this Subsection shall be payable as additional Rent. All furnishings, equipment, facilities, improvements, alterations, attachments and appurtenances not provided by City, but required for the Restaurant, including all kitchen equipment and interior furnishings, shall be maintained in Good Condition and repair by Tenant at its cost.

Tenant also agrees to keep the southerly eighty (80) feet of the Balboa Pier, including all benches, free from rubbish, debris and garbage related to the operation of the Restaurant. The City may perform required cleaning and charge the costs to Tenant if the Tenant fails to perform within five (5) days after notice to do so and continue to Maintain the area as required by this Lease."

5. AFFILIATE

As of August 18, 2021, RD Franchise Systems, LLC, a Nevada limited liability company ("RHG") succeeded to the rights and interests of Ruby's pursuant to that certain Asset Sale and Settlement Agreement, as amended. Accordingly, for the sake of clarity and for avoidance of doubt, RHG and any entity owned and controlled by RHG, or under common ownership and control with RHG, qualifies as an "Affiliate" or "Successor" of Ruby's within the meaning of Section 13.2 of the Lease, and as such may take assignment of the Lease without City's consent.

6. INSURANCE

Section 10.3 (Insurance Limits) is amended in its entirety and replaced with the following:

"10.3 Insurance. Without limiting Tenant's indemnification of City, Tenant shall obtain, provide and maintain at its own expense during the term of this Lease, a policy or policies of liability insurance of the type and amounts specified in Exhibit "E," attached hereto and incorporated herein by this reference."

7. NOTICES

Section 20 (Notices) is amended in its entirety and replaced with the following:

"Any notice, demand, request, consent, approval or communication that either Party desires or is required to give shall be in writing and shall be deemed given three (3) days after deposit into the United States registered mail, postage prepaid, by registered or certified mail, return receipt requested. Unless notice of a different address has been given in accordance with this Section, all notices shall be addressed as follows:

If to City, to: City of Newport Beach
Attention: Real Property Administrator
100 Civic Center Drive
Newport Beach, CA 92660

If to Tenant, to: Heritage Restaurant Management, Inc.
19602 Country Lake Drive
Magnolia, TX 77355

With a Copy to: Ruby's Hospitality Group, LLC
10795 W. Twain Avenue, Suite 100
Las Vegas, Nevada 89135
Attn: President

8. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Lease shall remain in full force and effect. In the event of a conflict between any term, provision, or condition of this Amendment and any term, provision, or condition of the Lease, the terms, provisions, or conditions of the Lease will control.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. One to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 5/15/25

By: Jose Montoya for
Aaron C. Harp
City Attorney
5.15.25
JAF

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

LESSOR: CITY OF NEWPORT BEACH,
a California municipal corporation and
charter city

Date: _____

By: _____
Grace K. Leung
City Manager

**LESSEE: HERITAGE RESTAURANT
MANAGEMENT, INC.,** a California
corporation

Date: _____

By: _____
John A. Fisher
Chief Executive Officer / Chief Financial
Officer

[END OF SIGNATURES]

Attachments: Exhibit E – Insurance Requirements
 Exhibit F – Location of Recycling and Organics Enclosure

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Aaron C. Harp
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*5-15-25
AF*

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By: _____
Leilani I. Brown
City Clerk

LESSOR: CITY OF NEWPORT BEACH,
a California municipal corporation and
charter city

Date: _____

By: _____
Grace K. Leung
City Manager

**LESSEE: HERITAGE RESTAURANT
MANAGEMENT, INC.,** a California
corporation

Date: 5-20-25

By: *John A. Fisher*
John A. Fisher
Chief Executive Officer / Chief Financial
Officer

[END OF SIGNATURES]

Attachments: Exhibit E – Insurance Requirements
 Exhibit F – Location of Recycling and Organics Enclosure

EXHIBIT E INSURANCE REQUIREMENTS

Without limiting the Lessee's indemnification of Lessor, Lessee shall procure and maintain in full force and effect at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and, in a form satisfactory to Lessor. Lessor reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, passage of time, or other special circumstances. If the existing policies do not meet the insurance requirements set forth herein, Lessee agrees to amend, supplement, or endorse the policies to do so.

1. Minimum Scope and Limit of Insurance.

- A. Workers' Compensation Insurance with statutory limits and Employer's Liability Insurance with a limit of at least one million dollars (\$1,000,000) each accident for bodily injury and each employee for bodily injury by disease in accordance with the laws of the State of California.

Lessee shall submit to Lessor, along with a certificate of insurance, a waiver of subrogation endorsement in favor of the Lessee, City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, employees.

- B. Commercial General Liability/Marine General Liability at least as broad as Insurance Services Office "occurrence" form CG 00 01 covering land and waterborne exposures including but not limited to coverage for bodily injury and property damage, products and completed operations, contractual liability, personal and advertising injury, independent contractors, and defense costs excess of limit, in an amount not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) general aggregate.

Lessee shall procure, maintain, and submit to Lessor evidence of Products-Completed Operations coverage for a period of three (3) years from the time the Agreement is terminated.

Lessee shall submit to Lessor, along with a certificate of insurance, additional coverage as stated in Section 2. Endorsements.

- C. Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering any auto (Code 1), or if Lessee has no owned autos, coverage for hired autos (Code 8) and non-owned autos (Code 9) with limit no less than one million dollars (\$1,000,000) each accident for bodily injury and property damage.

Lessee shall submit to Lessor, along with a certificate of insurance, additional coverage as stated in Section 2. Endorsements.

- D. Property Insurance coverage shall be maintained on an "All Risk" basis equal to the full replacement cost of Premises, with no coinsurance clause. Lessee shall be solely responsible for the payment of any deductible. Business Interruption insurance shall provide for monthly rent payable to Lessor for at least twelve (12) months if the premises are destroyed, unusable or inaccessible.

Lessee shall submit to Lessor, along with a certificate of insurance, additional coverage as stated in Section 2. Endorsements.

- E. Builder's Risk Insurance during construction, alteration or any improvements on Premises, Lessee shall maintain Builder's Risk insurance with no coinsurance clause to cover "All Risk" of physical loss including coverage for loss or damage from collapse and all property stored off-site or in transit. The value insured shall cover 100% of the completed contract cost and include Boiler & Machinery and soft costs and shall be maintained until full acceptance of completed work. Lessee shall be solely responsible for the payment of any deductible.

- F. Contractors Pollution Legal Liability or Pollution Legal Liability insurance including onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, non-owned disposal site liability, defense costs, cleanup costs, and pollution conditions that arise from or in connection with the transportation (including loading and unloading) by or on behalf of Lessee, of any waste or waste materials off or away from the project site. Coverage shall be provided for both sudden and accidental and gradual and continuous pollution events with limits no less than five million dollars (\$5,000,000) each loss and in the aggregate. The policy shall not exclude any hazardous materials for which there is exposure.

Lessee shall submit to Lessor, along with a certificate of insurance, additional coverage as stated in Section 2. Endorsements.

- G. Excess/Umbrella Liability Insurance shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all the insurance requirements stated in this Agreement, including, but not limited to the additional insured, primary & non-contributory and waiver of subrogation insurance requirements stated herein. No insurance policies or self-insurance maintained by the Lessor, whether primary, reinsurance or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Lessee's primary and excess/umbrella liability policies are exhausted.

Lessor requires and shall be entitled to Lessee's broader coverage and/or the higher limits if Lessee maintains broader coverage and/or higher limits than the minimums shown above. Any available insurance proceeds excess of the specified minimum limits of insurance and coverage shall be available to the Lessor. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Lessee under this Agreement.

2. Endorsements. Policies shall not comply if they include any limiting provision or endorsement contrary to this Agreement, including but not limited to restricting coverage to the sole liability of Lessee or excluding contractual liability. Policies shall contain or be endorsed to contain the following provisions.

A. Additional Insured. The Lessor, City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, and employees shall be covered as additional insureds with regard to liability and defense of suits or claims arising out of the activities, work or operations performed by or on behalf of the Lessee including materials, parts or equipment furnished in connection with such work or operations on all liability policies, except professional liability.

Additional insured endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or both CG 20 10 or CG 20 26, and CG 20 37.

B. Primary and Non-Contributory. All liability policies shall be primary to and will not seek contribution from any other insurance whether primary, excess, umbrella, or contingent insurance, including deductible, or self-insurance available to the Lessor, City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, and employees for all liability policies.

The primary endorsements shall be at least as broad as ISO CG 20 01 04 13.

C. Waiver of Subrogation. All insurance policies shall contain or be endorsed to waive subrogation against Lessor, City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, and employees. Lessee hereby waives its own right of recovery against Lessor and shall require similar written express waivers from each of its consultants, contractors, or subcontractors. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

D. Loss Payee. Losses payable under the Property and Builder's Risk Insurance policies, as they pertain to the Premises and related improvements (excluding trade fixtures, personal property, furnishing, or equipment that remain the property of Lessee under the terms of the Lease), shall be paid to the Lessor as its interests may appear.

3. Additional Agreements Between the Parties.

- A. General Obligations. In the event Lessor determines that (i) the Lessee's activities on the Premises creates an increased or decreased risk of loss to the Lessor, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverage be obtained, Lessee agrees that the minimum types and limits of any insurance policy required to be obtained by Lessee or Lessee's consultants, contractors, or subcontractors, may be changed accordingly upon receipt of written notice from Lessor. With respect to changes in insurance requirements that are available from Lessee's then-existing insurance carrier, Lessee shall deposit certificates and endorsements evidencing acceptable insurance policies with Lessor incorporating such changes within thirty (30) calendar days of receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then existing insurance carrier, Lessee shall deposit certificates evidencing acceptable insurance policies with Lessor, incorporating such changes, within ninety (90) calendar days of receipt of such notice.
- B. Use of Premises. Lessee agrees not to use the Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance coverage for the Premises or adjoining property. Lessee further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any insurance policy covering the Premises. Lessee shall, at its sole expense, comply with all reasonable requirements for maintaining the required insurance coverage on the Premises.
- C. Evidence of Insurance. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Lessor as to form and content. These requirements are subject to amendment or waiver only if approved in writing by the Lessor. The Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Lessor. If such coverage is cancelled or reduced, Lessee shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Lessor evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.
- D. Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A-: VII and authorized to do business in the State of California, or otherwise allowed to

place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law or otherwise approved by the Lessor's Risk Manager.

- E. Notice of Cancellation. All insurance policies shall contain or be endorsed to provide that the insurance required by this Agreement shall not be suspended, voided, canceled, or reduced in coverage or in limits until thirty (30) days written notice has been served upon the Lessor, except ten (10) days for non-payment of premium. It is Lessee's obligation to ensure that provisions for such notice have been established.
- F. Self-Insured Retentions. Self-insured retentions (SIR's) must be declared to and approved by Lessor. Lessor may require Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the SIR. The policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or Lessor. Self-insured retentions shall be the sole responsibility of Lessee, or subcontractor who procured such insurance. Lessor may deduct from any amounts otherwise due Lessee to fund the SIR. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR.
- G. Contractual Liability. The policy shall cover liability assumed under an insured contract, including the tort liability of another assumed in a business contract, with no endorsement or modification limiting the scope of coverage for liability assumed under contract.
- H. Reporting Requirements. Lessee shall give Lessor prompt and timely notice of any claim made or suit arising out of or resulting from Lessee or Lessee's agents, representatives, consultants, contractors, or subcontractors' performance under this Agreement, including but not limited to any claims or suits related to operational impacts or third-party injuries.
- I. Subcontractors. Lessee shall be responsible for causing consultants, contractors and/or subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an additional insured, providing primary and non-contributory coverage and waiver of subrogation to the subcontractor's policies, and meeting the following requirements:
 - 1. Commercial General Liability/Marine Liability Endorsements. For Commercial General Liability/Marine General Liability coverages, contractors, consultants and/or subcontractors shall provide coverage with a format at least as broad as provided by Insurance Services Office form CG 20 38 04 13. Unless written approval is granted by Lessor, contractors and/or subcontractors shall also

provide an additional insured endorsement at least as broad as ISO Form CG 40 12 19.

2. Completed Operations. Lessee shall require and verify that Lessee's construction contractors and subcontractors maintain commercial general liability insurance, including products-completed operations, for a period of at least five (5) years from the time that all work is completed.
3. Design Professionals. Lessee shall require that Lessee's consultants, contractors and/or subcontractors providing any design, engineering, surveying, or architectural services for the Premises maintain professional liability insurance that covers the services to be performed, in the minimum amount of two million dollars (\$2,000,000) each claim and four million dollars (\$4,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date and all subsequent insurance shall coincide or be effective on the first Agreement for Lease of Premises. Lessee shall require that Lessee's consultants, contractors and/or subcontractors agree to maintain continuous coverage through a period of no less than five (5) years after completion of the services performed.
4. Failure to Maintain Insurance. If Lessee or Lessee's consultants, contractors or subcontractors fail or refuse to maintain insurance as required in this Agreement, or fail to provide proof of insurance, Lessor has the right to declare this Agreement in default without further notice to Lessee, and Lessor shall be entitled to exercise all available remedies.

EXHIBIT F
LOCATION OF RECYCLING AND ORGANICS ENCLOSURE

