

Attachment B to Agenda File No. 2023-0091

SECOND AMENDMENT TO RESTAURANT LEASE

This Second Amendment to Restaurant Lease (“Amendment”) is made and entered into this ___ day of January, 2023, by and between Pacific Gateway, Ltd., a California limited partnership (“Landlord”), and OS Pacific, LLC, a Florida limited liability company (“Tenant”).

RECITALS

WHEREAS, Landlord and Tenant entered into that certain Restaurant Lease dated as of August 21, 2006, as amended by that certain First Amendment to Restaurant Lease between Landlord and Tenant dated June 20, 2007 (the “Lease”), for the leasing of certain “Premises” more particularly described therein; and

WHEREAS, Landlord and Tenant wish to further amend the Lease as set forth herein.

NOW, THEREFORE, for and in consideration of the Premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged and confessed, Landlord and Tenant hereby covenant and agree as follows:

1. **Defined Terms.** All terms used in this Amendment which are not otherwise defined in this Amendment are used with the same meaning attributed to such terms in the Lease.
2. **Term.** Upon expiration of the first Option Period, the Lease shall be extended for a term of ten (10) years and the new Termination Date of the Lease shall be April 30, 2033. Subject to the terms, conditions and notice requirements outlined in Section 4.3 of the Lease, Tenant may extend the Term of the Lease for an additional two (2) Option Periods of five (5) years each. For the avoidance of doubt, unless further extended in writing by mutual agreement of the parties, the Lease may be extended no further than April 30, 2043.
3. **Rental.**
 - (a) **Minimum Rent.** Upon expiration of the existing Term, the Minimum Rent shall be paid as follows:

Lease Years	Monthly payments of Annual Rent
5/1/2023 - 4/30/2028	\$ 133,100.00
5/1/2028 - 4/30/2033	\$ 146,410.00
Option Term 1	\$ 161,051.00
Option Term 2	\$ 177,156.00

- (b) **Percentage Rent.** Upon expiration of the existing Term, Percentage Rent shall be paid as follows:

Lease Years	Percentage	Breakpoint
5/1/2023-4/30/2028	4%	\$4,500,000.00
5/1/2028-4/30/2033	4%	\$5,000,000.00
Option Term 1	4%	\$5,000,000.00
Option Term 2	4%	\$5,200,000.00

(c) Port Authority Rental.

(i) The second paragraph of 5.2(c) of the Lease is hereby deleted in its entirety.

(ii) The following shall be added as 5.1(e) of the Lease:

Tenant shall be responsible for paying its portion of the Port Authority Rental applicable to the Premises directly to Landlord monthly in arrears. Tenant shall prepare a statement of its portion of the Port Authority Rental due for the immediately preceding month fifteen (15) days after expiration of each calendar month during the Term. Landlord shall note its approval of such invoice, and the Port Authority Rental shall be due promptly upon receipt of such approval. Within sixty (60) days from the end of each Lease Year, Tenant shall deliver to Landlord and Manager a written statement of the Gross Sales made during the preceding Lease Year together with the amount of Port Authority Rental due to Landlord hereunder for such Lease Year. In the event the annual statement shall reflect that Tenant's portion of the Port Authority Rental due with respect to the period discovered by such statement is more or less than Tenant's required portion of the Port Authority Rental actually paid by Tenant and received by Landlord, Tenant shall immediately remit the shortfall to Landlord or Landlord shall refund the excess to Tenant within thirty (30) days after the date of receipt of such statement, whichever is applicable.

(iii) Landlord and Tenant agree that the Tenant's portion of the Port Authority Rental shall be based on the following percentages of the Gross Sales (as defined in the Port Authority Lease) of the operations and businesses conducted on or from the Premises:

- (1) Three percent (3%) of the Gross Sales from food sold.
- (2) Five percent (5%) of the Gross Sales from on-sale alcoholic and nonalcoholic beverage sales.
- (3) Five percent (5%) of the Gross Sales from the sale of gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries and incidentals of any kind.

(d) Additional Rent. All Rent shall be due and payable as outlined in Section 5.2 of the Lease.

4. Tenant's Work.

(a) The following Section 3.5 shall be added at the end of Article III of the Lease:

By August 31, 2023, Tenant shall refresh the interior of the Premises to a like-new condition, shall incorporate Tenant's latest store design concept to the extent possible without making structural alterations, which shall include those items specified as "items to be completed no later than August 31, 2023 "on Exhibit A which is attached hereto and incorporated by reference herein. collectively referred to as "Refreshment Work"). Tenant will complete the additional refresh items specified on Exhibit A in an expeditious manner before or after August 31, 2023. In addition to those causes of delay specified in Section 32.15, delays due to any type of permitting or approval from the Landlord or any other controlling municipality for the property shall extend the time for performance herein by the number of days of delay. In the event the costs of the Refreshment Work exceeds \$1,000,000, Tenant will then have the option to scale back its scope of work. In no event will the cost of the Refreshment Work be less than \$1,000,000 and will be in a manner that the completed Refreshment Work will result in a first-class fine dining restaurant. Subject to the Term provided for herein, Landlord may make this request no more than once every five (5) Lease Years. Tenant shall submit plans, specifications and drawings to Landlord regarding any Refreshment Work in accordance with Article 15 hereof.

(b) The parties further agree that Tenant shall, in addition to the work as outlined above in Section 4(a), complete the following:

- (i) update all exterior signage in compliance with all Applicable Laws;
- (ii) install updated interior signature within the Premises.

5. **Deletion Of Guaranty.** Section 32.24 of the Lease is deleted in its entirety and the Guaranty specified therein is terminated and shall no longer have any force or effect and the Landlord releases and discharges Guarantor from any further obligations under the Lease.

6. **Additional Terms.** The Lease is amended to include the following terms:

a. Landlord and Tenant acknowledge and agree that Landlord's rights to the Premises are pursuant to the Port Authority Lease. Landlord and Tenant both acknowledge and agree that notwithstanding anything to the contrary stated or implied in the Lease (as amended), the Lease shall at all times be subject and subordinate, in all respects, to the Port Authority Lease, and the Lease is a sublease being created under the authority of the Port Authority Lease, the terms of which shall be incorporated into the Lease.

b. In no event shall Tenant have any rights under the Lease which have not been granted to Landlord under the Port Authority Lease nor may Tenant take any action under the Lease that would violate any term, provisions, requirement, or condition of the Port Authority Lease. Landlord and Tenant acknowledge and agree that nothing contained in the Lease shall in any way amend or modify any of the rights and obligations of Port Authority and Landlord under, nor be used in the interpretation of any provision of, the Port Authority Lease, including, but not limited to, those provisions governing approvals of any modifications and/or alterations to the Premises. Nothing in the Lease (as amended) is to be construed as an approval by the Port Authority of any project described or set forth in the terms of the Lease and Port Authority retains

all discretion under the Port Authority Lease to approve, disapprove, and/or condition its approval on any proposed modifications and/or alterations of the Premises proposed by Landlord and/or Tenant.

c. Landlord and Tenant understand and agree that nothing contained in the Lease shall be binding on or enforceable against Port Authority, nor will Port Authority incur any liability arising out of or relating to the Lease and Landlord and Tenant hereby release and agree to jointly and severally indemnify and hold Port Authority harmless from and against any litigation, claim, action, proceeding, loss, damage, cost, expense (including, without limitation, all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, or relating to, the Lease.

d. Tenant agrees, that if the Port Authority Lease terminates, or if Port Authority succeeds to Landlord's estate in the Premises, Tenant shall, at the option of Port Authority (in Port Authority's sole and absolute discretion), attorn to and recognize Port Authority as Tenant's landlord under the Lease, provided that Port Authority shall not: (i) be liable for any act or omission or negligence of Landlord; (ii) be subject to any counterclaim, offset or defense which theretofore accrued to such Tenant against Landlord; (iii) be bound by any payment of rent or other sums of money for more than one (1) month in advance or any security deposit (unless actually received by Port Authority); (iv) be obligated to perform any work in the Premises under the Lease; (v) in the event of a casualty, be obligated to repair or restore any improvements or make any payment to Tenant; (vi) in the event of a taking, be obligated to repair or restore any improvements or make any payment to Tenant; or (vii) be bound by any obligations that Port Authority lacks the capacity to perform. Tenant shall promptly execute and deliver any instrument Port Authority may reasonably request to evidence such attornment.

e. Tenant agrees to make all payments of rent and other sums of money due under the Lease to Port Authority during the existence of a default under the Port Authority Lease and following written notice of the same from Port Authority, and Port Authority shall apply said payments made to all rent that is due and payable to Port Authority pursuant to the Port Authority Lease, and any remaining amounts will be held and applied to future rent payable under this Port Authority Lease.

f. In the event of a conflict between the terms of this Section 6 and the other terms of the Lease (as amended), the terms of this Section 6 shall control.

7. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment and of signature pages by electronic mail transmission (e.g., in .PDF format) will constitute effective execution and delivery of this Amendment as to the parties and may be used in lieu of the original copy for all purposes. Signatures of the parties transmitted by electronic mail (e.g., in .PDF format) will be deemed to be their original signatures for any purpose whatsoever. Without limiting the foregoing, the words "execution," "execute," "signed," "signature," and words of like import in or related to this Amendment shall be deemed to include electronic signatures (e.g., through DocuSign© or other similar electronic e-signature application), each of

which shall be of the same legal effect, validity or enforceability as a manually executed signature, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

8. **Non-Disclosure**. By its signature hereto, Tenant acknowledges and agrees that the terms and circumstances under which Landlord has agreed to the provisions of this Amendment are confidential and constitute proprietary information of Landlord. Except for the Tenant's attorneys, accountants and employees and to the extent required by law, Tenant hereby agrees it shall not disclose the terms hereof to any third-party.

9. **Lease in Effect**. Landlord and Tenant hereby agree that the Lease, as hereby amended remains in full force and effect in accordance with its terms. Tenant acknowledges that Landlord reserves all of its rights and remedies it is entitled to both under the Lease and applicable law, and except as expressly provided for herein, nothing in this Amendment or otherwise shall operate to waive any such right or remedy. The failure or delay of Landlord in exercising any rights granted to it under the Lease shall not constitute a waiver of any such right and Landlord may exercise that right at any time.

[Signatures to follow on next page]

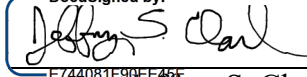
IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date set forth above.

LANDLORD:

PACIFIC GATEWAY, LTD.

By: S.D. Hotels, LLC

DocuSigned by:



By:

Name: Jeffrey S. Clark

Title: Vice President

TENANT:

OS PACIFIC, LLC

By:

Name:

Title:

Exhibit "A"
Proposed Restaurant Renovation Scope of Work
General Restaurant Renovation

- Replacing any damaged or broken floor tiles or ceiling tiles throughout the restaurant
- Replace all carpet throughout restaurant interior
- Repair, re-painting, re-staining all walls, support column, and woodwork throughout the restaurant
- New interior lighting package + upgrade existing can lights to CA code; to include in main dining room, ceiling, elevator area, stairwell, upstairs private dining room, upper hallway and pre-function area.
- New artwork to align with new design package
- New chairs for dining room, wine room and private dining area = 300
- New bar stools for wine room = 30
- New high top tables to replace chef counter = 4 + bar stools = 16

MAIN DINING ROOM + WINE ROOM

- Refinish or replace host stand + armoire; create feature wall
- Refresh restrooms; paint, fixtures, decor, etc.
- Redesign wine bar for added efficiency; add cube ice machine
- Repair missing tiles on bar.

UPSTAIRS

- Convert upstairs storage room into a cold pantry; add two compartment sink; prep line
- Refresh upstairs restrooms: paint, fixtures, decor, etc.
- Replace iron railing in PDR to align with new design package
- Refresh satellite bar
- Repair or replace wheelchair lift
- Repaint outside patio
- Re-stain teak patio furniture

OUTSIDE PATIO

- Repaint entire patio
- Refresh the fire pit
- Upgrade sound system; tv monitors
- Build hanging glass racks for outside bar
- Add permanent awning over portion of patio*
- Refinish teak service station
- Redesign outdoor bar for added efficiency; add cube ice machine
- New exterior landscaping of beds facing promenade

KITCHEN

- Rework stations in kitchen to create inline chef lines (3)
- Replace all dated, inefficient equipment

- Build permanent rain cover over AC units on back dock

The above noted scope will only be revised should scope exceed \$1M or if prohibited by landlord or port (permanent exterior awning).