

ORDINANCE NO. 7,591–N.S.

LEASE AMENDMENT FOR RUI ONE CORPORATION AT 100 SEAWALL DRIVE,
EXTENDING THE LEASE TERM AND ADDING A HOLDOVER PROVISION

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS

The City and Lessee are parties to a Ground Lease agreement between the City and Manning’s Inc., the Lessee’s predecessor-in-interest, dated March 23, 1967 (Ord. 4247-N.S.). This initial agreement has been amended by the City of Berkeley City Council on May 18, 1967; July 6, 1967; May 7, 1974 (Ord. 4697-N.S.); June 6, 1974; February 14, 1978 (Ord. 5027-N.S.); and September 24, 1996 (Ord. 6341-N.S.). The Lease, as amended and assigned is set to expire on March 31, 2018. The City now wishes to extend the term of the Lease to December 31, 2018, and add a standard holdover provision to the agreement.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO A GROUND LEASE AMENDMENT FOR 100 SEAWALL DRIVE

The City Manager is hereby authorized to enter into an Amendment to the Lease with Rui One Corporation for the premises at 100 Seawall Drive in Berkeley, which will extend the term of the lease from March 31, 2018, to December 31, 2018, and add a holdover provision. The terms of the amendment shall be substantially the same terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 13, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

**Exhibit A:
Amendment to Lease**

THIS LEASE AMENDMENT ("Amendment") is made and entered into as of March 14, 2018, by and between the City of Berkeley, a California municipal corporation and owner of the subject premises ("Landlord"), and Restaurants Unlimited, Inc., a Washington Corporation ("Lessee").

Recitals

- A. Lessee and Lessor are parties to that certain Ground Lease between Lessor and Manning's Inc., Lessee's predecessor-in-interest, dated March 23, 1967 (Ord. 4247-N.S.), as amended by the City of Berkeley City Council on May 18, 1967; July 6, 1967; May 7, 1974 (Ord. 4697 – N.S.); June 6, 1974; February 14, 1978 (Ord. 5027 – N.S.); and September 24, 1996 (Ord. 6341-N.S.). The Ground Lease, as amended and assigned is hereinafter referred to as the "Lease." The Lease provides for the lease of certain land and improvements constructed thereon located at 200 Seawall Drive, Berkeley, California, as more particularly described in the Lease ("Premises").
- B. Lessor and Lessee desire by this Amendment to i) extend the Term of the Lease, ii) add a holdover clause, and iii) make certain other amendments to the Lease, as set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

Agreements

1. Recitals; Capitalized Terms. The foregoing recitals are incorporated by reference into the Amendment. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Lease.
2. Extension of Term. The Term of the Lease with respect to the entirety of the Premises is hereby extended to December 31, 2018. As so extended, the Expiration Date of the Lease shall be December 31, 2018. All terms of the Lease, including provisions applicable to payment of Rent, including Base Rent (also referred to as Fixed Rent) and Percentage Rent, shall continue in effect for the extension term.
3. Addition of New Section 41. A new Section 41 is hereby added to the Lease to read as follows:

41. HOLDING OVER. Lessee has no right to retain possession of the Premises or any portion thereof beyond the expiration or termination of

this Lease. In the event that Lessee holds over after the expiration of the Term without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy, except that the Base Rent (also referred to as Fixed Rent) shall be payable monthly in the amount of \$24,000 per month and no percentage rent shall be due for the holdover period. Nothing contained herein shall be construed as consent of Landlord to any holding over by Lessee.”

4. Ratification of Lease. The Lease, as amended by this Amendment, is hereby ratified, confirmed and approved in all respects. In the event of any inconsistency between the provisions of this Amendment and the provisions of the Lease, the provisions of this Amendment shall govern.
5. Entire Agreement. This Amendment sets forth the entire understanding of the parties in connection with the subject matter hereof. There are no agreements between Landlord and Lessee relating to the Lease other than those set forth in writing and signed by the parties. Neither party hereto has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Amendment.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the date written on the first paragraph above.

CITY OF BERKELEY:

BY:

Dated: _____

City Manager

Dated: _____

APPROVED AS TO FORM:

City Attorney

REGISTERED BY:

City Auditor

ATTEST:

Deputy City Clerk

LESSEE:

By:

Title:

City of Berkeley Business License No.: _____