

## ASSIGNMENT OF LEASE

**THIS ASSIGNMENT OF LEASE** (“Assignment”) is made as of this \_\_\_ day of October, 2014 by and between Olde Port Inn, Inc., (“Assignor”), and DRW Restaurants, Inc. (“Assignee”).

### Recitals

A. Port San Luis Harbor District, (“Landlord”), as landlord, and Assignor, as Tenant, executed a document entitled “Lease for Premises Located on Harford Pier” dated December 14, 2010 (“Lease”), a copy of which is attached and incorporated by reference as **Exhibit “A”**, pursuant to which Landlord leased to Tenant and Tenant leased from Landlord that certain property described on attached **Exhibit “B”** and incorporated by reference for an initial term of thirteen (13) months, commencing on January 1, 2011 and ending on January 31, 2012, subject to earlier termination as provided in the Lease. The Lease provided an option for the Tenant to extend the initial term of the Lease for two consecutive one-year terms. The tenant exercised the option to extend for two consecutive one-year terms.

B. On or about September 27, 2011, Landlord and Assignor entered into the first “Amendment to Lease” whereby the terms of the Lease were amended. (“First Amendment.”) A copy of the First Amendment is attached hereto as **Exhibit “C”** and incorporated herein by this reference.

C. On or about February 1, 2014, Landlord and Assignor entered into a second Amendment to Lease Agreement whereby, among other things, the term of the Lease was modified to become a year-to-year tenancy beginning on February 1, 2014 and ending on January 31, 2015, subject to earlier termination (“Second Amendment”). A copy of the Second Amendment is attached hereto as **Exhibit “D”** and incorporated herein by this reference.

D. On or about October \_\_\_\_, 2014, Landlord and Assignor entered into a Third Amendment to Lease Agreement whereby, among other things, the term of the Lease was extended for an additional five (5) years commencing on February 1, 2015 and terminating on January 31, 2020 (“Third Amendment”). A copy of the Third Amendment is attached hereto as **Exhibit “E”** and incorporated herein by reference. As hereinafter set forth in this Assignment, the term “Lease” shall mean the Lease, the First Amendment, the Second Amendment, and the Third Amendment.

E. Assignor desires to assign the Lease to Assignee, and Assignee desires to accept the assignment of the Lease from the Assignor and assume obligations under terms and conditions set forth herein.

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Assignor and Assignee agree as follows:

1. **Assignment.** Assignor assigns and transfers to Assignee all right, title, and interest in the Lease and Assignee accepts from Assignor all right, title, and interest, subject to the terms and conditions set forth in this Assignment.

2. **Effective Date of Assignment.** This Assignment shall become effective on \_\_\_\_\_, 2014.

3. **Assumption of Lease Obligations.** Assignee assumes and agrees to perform and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor as tenant under the Lease, including the making of all payments due to or payable on behalf of Landlord under the Lease as they become due and payable.

4. **Assignor's Covenants**

a. Assignor covenants that the copy of the Lease and all amendments thereto which are attached to this Assignment as Exhibits A, B, C, D, and E are true and accurate copies of the Lease and amendments as currently in effect and that there exists no other agreement affecting Assignor's tenancy under the Lease.

b. Assignor covenants that the Lease is in full effect and no default exists under the Lease, nor any acts or events which, with the passage of time or the giving of notice or both, could become defaults.

5. **Conditions Precedent.** This Assignment shall not be effective until all of the following occur:

a. Landlord has executed and delivered to Assignor the Third Amendment.

b. Assignor and Assignee have closed on the sale of Assignor's assets to Assignee.

c. Landlord has consented, in writing, to this Assignment [see below LANDLORD'S CONSENT TO ASSIGNMENT].

d. David R. Whitestone has signed the Guaranty attached hereto as **Exhibit "F"** and personally guarantees all obligations, duties, covenants, and conditions of the Tenant under the Lease pursuant to the terms of the Guaranty.

6. **Attorney's Fees/Costs.** If any litigation between Assignor and Assignee arises out of this Assignment or concerning the meaning or interpretation of this Assignment, the losing party shall pay the prevailing party's costs and expenses of this litigation, including, without limitation, reasonable attorney's fees.

7. **Indemnification.** Assignor indemnifies Assignee from and against any loss, cost, or expense, including attorney's fees and court costs relating to the failure of Assignor to fulfill Assignor's obligations under the Lease, and accruing with respect to the period on or prior to the date of this Assignment. Assignee indemnifies Assignor from and against any loss, cost, or expense, including attorney's fees and court costs relating to the failure of Assignee to fulfill Assignee's obligations under the Lease, and accruing with respect to the period subsequent to the date of this Assignment.

8. **Successors and Assigns.** This Assignment shall be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

9. **Governing Law.** This Assignment shall be governed by and construed in accordance with California law.

10. **Miscellaneous Provisions.** The following miscellaneous provisions shall apply to this Assignment:

a. Counterparts. This Assignment may be executed in any number of counterparts and delivered by facsimile or other means of electronic transmission, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

b. Venue. Venue for any dispute arising under this Assignment shall be in the courts in and for San Luis Obispo County, California.

c. Amendments. No modification or amendment of this Assignment will be of any force or effect unless made in writing and executed by both parties.

d. Further Documents. The parties agree that they will execute such other instruments and documents as are or may become necessary or convenient to carry out the intent and purposes of this Assignment.

e. Severability. If any one or more of the provisions contained in this Assignment are held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof.

f. Entire Agreement. This instrument contains all of the understandings and agreements of whatsoever kind and nature existing between the parties hereto with respect to this Assignment, and the rights, interests, understandings, agreements and obligations of the respective parties and their prior oral agreements, if any.

g. Headings. All headings in this Assignment are inserted only for convenience and ease of reference, and are not to be considered in the construction or interpretation of any provision of this Assignment.

h. Authority. Each individual executing this Assignment on behalf of a party hereto, by his or her signature, represents that he or she maintains full authority on behalf of the applicable party to execute this Assignment, and thereby bind the applicable party to all covenants, duties and obligations contained herein.

i. Exhibits. All exhibits and schedules to this Assignment as referenced in any portion hereof are hereby incorporated by this reference, as though fully set forth in the body of this Assignment; provided, however, notwithstanding any other provisions of this Assignment, if for any reason any exhibit referenced herein is not attached to this Assignment at the time of its execution by the parties, then when such exhibit becomes available, it shall be initialed by the

parties and attached to this Assignment, bearing no impact on the enforceability of this Assignment.

**IN WITNESS WHEREOF**, the parties have executed this Assignment as of the date first above written.

**“ASSIGNOR”**

**“ASSIGNEE”**

Olde Port Inn, Inc., a California corporation

DRW Restaurants, Inc,

By: \_\_\_\_\_  
Leonard Cohen, President

By: \_\_\_\_\_  
David Whitestone, President

**LANDLORD’S CONSENT TO ASSIGNMENT**

Landlord, Port San Luis Harbor District, hereby consents to the assignment of the Lease as set forth in the Assignment attached hereto, provided however, (1) notwithstanding any provision in the Lease to the contrary, Olde Port Inn, Inc. and Leonard Cohen are not released of any liability or obligations under the Lease and his personal Guaranty of the Lease until January 31, 2015, after which time (i.e., subsequent to January 31, 2015), both Olde Port Inn, Inc. and Leonard Cohen, and all other persons, firms, partnerships, or corporations and legal entities that have been, are now, or may hereinafter be affiliated with Olde Port Inn, Inc. and Leonard Cohen, but excluding the Assignee and David Whitestone shall have no further liability or obligations under the Lease except for those liabilities or obligations that arose from acts, omissions or events occurring prior to January 31, 2015 or for any express or implied indemnity obligation under the Lease for a claim based on acts, omissions or events occurring prior to January 31, 2015, and (2) either Leonard Cohen or David Whitestone reimburse the Port San Luis Harbor District for their attorney’s fees incurred in connection with this Assignment up to Two Thousand Five Hundred Dollars (\$2,500).

Notwithstanding this Assignment and the undersigned's consent to this Assignment, Assignor shall remain primarily obligated as Tenant under the Lease up to and including January 31, 2015, but not thereafter as set forth above in the preceding paragraph, and the undersigned does not waive or relinquish any rights under the Lease against Assignor or Assignee, except as limited and released in the preceding paragraph.

**LANDLORD:**

Port San Luis Harbor District

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_