



AGENDA REPORT

Meeting Date: June 17, 2014
Item Number: G-1
To: Honorable Parking Authority
From: Brenda Lavender, Real Estate & Property Manager
Subject: CONSENT TO ASSIGNMENT AND SECOND AMENDMENT OF LEASE BY AND AMONG THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS (LANDLORD), STROUK GROUP INC (TENANT) AND SOUTHWEST WINE & SPIRITS, LLC (SUBTENANT) AT 447 N. CANON DRIVE

Attachments:

1. Consent to Assignment
2. Second Amendment of Lease
3. J Daniel Davis – Legal Opinion Letter

RECOMMENDATION

It is recommended that the Parking Authority approve the Consent to Assignment, Second Amendment of Lease and Guaranty of Assignment by and between the Parking Authority of The City of Beverly Hills as Landlord, Strouk Group Inc., dba Monsieur Marcel as Assignor and Southwest Wine & Spirits dba Wally's Wine & Spirits as Assignee; and Paul and Maurice Marciano As Guarantors. Copies of the agreements are on file with the City Clerk. This agreement consents to the assignment of the lease from Monsieur Marcel to Wally's Wine & Spirits.

INTRODUCTION

In September, 2011 the Parking Authority approved a lease with Monsieur Marcel at this location, and in February of 2013 Monsieur Marcel officially opened for business. Initially after the grand opening the restaurant portion of the location was well received, but the gourmet market portion has always struggled. Now the restaurant sales have slowed dramatically and overall sales are down for the location. The Strouk Group is therefore requesting this expanded lease assignment.

DISCUSSION

In December, 2013 Monsieur Marcel was approved to sublease approximately 1,500 rentable square feet to Southwest Wine & Spirits LLC, dba Wally's Wine & Spirits. The

sublease allowed Wally's Wine & Spirits to take over the wine, beer and champagne sales within Monsieur Marcel.

Monsieur Marcel is now requesting Landlord approval to assign the entire lease over to Wally's Wine & Spirits. On May 6, 2014, the City Council tabled the lease assignment. At the May 6th meeting and at a subsequent Chamber of Commerce Government Affairs Committee meeting, nearby merchants and residents raised concerns about the lease rate, the legality of the ownership interests in this business, the type of use proposed and whether other lease offers would be considered. At the Chamber's Government Affairs Committee meeting on May 15th, Wally's representatives showed images and descriptions of the extensive tenant improvements they propose, at their expense, to operate as a purveyor of wine, spirits, specialty cheese, fresh breads, coffee, caviar and similar products and to serve lunch and dinner with bar service. Wally's clarified that children would be allowed as in other restaurants with bars and that they were not proposing a nightclub. Wally's provided their legal assessment of the right for their current owners and guarantor to serve those roles and submitted the attached Legal Opinion Letter for City review.

The Assignment of the Lease from Monsieur Marcel to Wally's would allow Wally's Wine & Spirits to take over the entire store and assume the lease responsibilities. Wally's would remodel the store (keeping the kitchen area in tact) to create Wally's Vinoteca; a wine, gourmet food and dining emporium. The location will include all of the fine wines, spirits, specialty cheese, fresh bread, coffee, caviar and other specialty items that Wally's is known for. In addition the location will offer a full dining experience for lunch, dinner and special events. There is no age restriction in the dining area and Wally's will offer more dining seats than Monsieur Marcel.

Some of the neighboring business owners have suggested that a market rental rate for this space would be \$10 - \$12 per square foot per month. Evaluation of the market and of the subject lease space does not bear this out. The leases that have been completed at the \$10 - \$12 per square foot monthly rates are not for comparable spaces. They are typically on Beverly Drive, not Canon Drive. Spaces that lease at the higher rates are for much smaller spaces than this 6,820 square foot space and they are for non-restaurant tenants. The subject space is over 120 feet deep, L-shaped and with limited frontage. It was marketed at an asking rate of \$4 - \$6 per square foot and remained vacant for over two (2) years until being leased at under \$3 per square foot. Post-recession, the market rent for this space is likely back to the prior asking rate. However, the City does not have the right to take the space back and re-lease it. The tenant is allowed quiet enjoyment of the space; and until and unless the tenant defaults on the space, the City does not have the right to terminate the space.

The current tenant has a binding lease with just under 8 years remaining on the term, plus two 5-year options that include market based rent increases, to be determined at the time of the options. The current lease with Monsieur Marcel includes the right to assign the lease with approval of the City, so the issue before the City is whether or not to approve this assignment. If the City decided to deny Monsieur Marcel's request to assign the lease, the lease wouldn't automatically terminate and Monsieur Marcel would have the right to continue to operate in the space. In addition, if the City denies the assignment, Monsieur Marcel could: 1. change its dba name from Monsieur Marcel to Wally's Wine & Spirit without the City's consent, 2. request Landlord approval for the planned tenant improvements and Landlord's approval cannot be unreasonably withheld, 3. extend their operating hours above the minimum lease required hours without Landlord's approval, 4. essentially operate as Wally's Wine & Spirits without

selling spirits at the lower rental rate. The City does not have the option to terminate the lease and the tenant has stated that if the assignment is denied they will continue to operate in the space. Wally's has asserted that the Wally's Vinoteca will be an added asset to other businesses on the street with the financial strength to be a long-term success, providing synergy with the Wallis and other businesses in the area.

As a part of the assignment, Wally's will increase the rent to \$4.00/SF which is an annual increase in guaranteed rent of \$75,360. The percentage rent breakpoint will also increase from \$4,000,000 to \$6,000,000 annually. Although Monsieur Marcel has never reached percentage rent sales levels, this change theoretically reduces potential percentage rent by \$55,000. The percentage rent would also be capped at sales of \$10,000,000, so the City would receive additional proceeds on all sales between \$6,000,000 and \$10,000,000. Wally's will be responsible for all costs associated with the remodel and would pay rent during the construction period so that there is no loss in rent to the City. Wally's anticipates a construction period of 60-90 days after receipt of permits. Wally's will work with the Alcohol and Beverage Control Board to obtain any additional licenses required for the location. The planned operating hours for the store and restaurant are 10 am to 11 pm.

The lease will be guaranteed by Paul and Maurice Marciano and Wally's Attorney J. Daniel Davis opines that both Paul and Maurice have the legal right to do so.

FISCAL IMPACT

The assignment of lease will increase base rent by \$75,360 annually to a total of \$301,440.00. There is no out of pocket cost for the City.

David Lightner, Deputy City Manager 
Approved By

Attachment 1

CONSENT TO ASSIGNMENT OF LEASE

The **PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS** (“**Landlord**”), as landlord under that certain Lease dated September 27, 2011 (entered into by the City of Beverly Hills, as landlord and predecessor-in-interest to Landlord) as amended by a First Amendment of Lease dated December 18, 2012 and a Consent to Sublease Agreement and Clarification of Lease Operating Hours dated December 17, 2013 (the “**Lease**”) with STROUK GROUP LLC, a California limited liability company, formerly known as, STROUK GROUP, INC., a California corporation, d/b/a “Monsieur Marcel” (“**Assignor**”), as tenant, **subject to and specifically conditioned upon the following terms and conditions**, hereby grants its consent to the assignment of the Lease described in that certain Assignment and Assumption Agreement entered into, or proposed to be entered into, by and between Assignor, as assignor, and SOUTHWEST WINE & SPIRITS, LLC, a California limited liability company, d/b/a “Wally’s Wine & Spirits”, as assignee (“**Assignee**”), a copy of the form of which is attached hereto as Exhibit “A” (the “**Assignment**”).

Capitalized terms used herein but not defined shall have the meanings ascribed thereto in the Lease. This Consent to Assignment of Lease (this “**Consent**”) may be executed in counterparts, each of which shall be considered an original but shall constitute one and the same document.

As conditions to the Consent, it is understood and agreed as follows:

1. **Conditions to Consent.** Landlord’s consent to the assignment of the Lease is hereby conditioned upon the occurrence of the following prior to or concurrently with Assignee’s and Assignor’s execution and delivery to Landlord of this Consent: (a) the execution and delivery to Landlord of (i) the Assignment; (ii) a Guaranty of Lease in the form attached hereto as Exhibit “B”; and (iii) a Second Amendment to Lease in the form attached hereto as Exhibit “C”; (b) delivery to Landlord of insurance certificate(s) showing that Assignee carries the insurance required under the Lease; and (c) the payment by Assignor or Assignee to Landlord of the sum of \$1,500 (i.e., the fee described in Section 20(c) of the Lease).
2. **Assignor’s Release.** Landlord acknowledges and agrees, because Assignee and Assignor are related parties, that Assignor shall be, and is, relieved of any liability under the Lease from and after the date of this Consent.
3. **Limited Consent.** This Consent does not and shall not be construed or implied to be a consent to any other matter for which Landlord’s consent is required under the Lease, including, without limitation, any alterations for which Landlord’s consent is required.
4. **Review of Lease.** Assignee hereby represents and warrants that it has reviewed the Lease and is familiar with the terms hereof.

[SIGNATURES APPEAR ON NEXT PAGE]

Dated: June 17, 2014

ASSIGNOR:

STROUK GROUP, LLC,
a California limited liability company,
formerly known as
Strouk Group, Inc., a California corporation

By: 
Print Name: Stephane Strouk
Title: CEO

ASSIGNEE:

SOUTHWEST WINE & SPIRITS, LLC,
a California limited liability company

By: 
Print Name: Armand Marciano
Title: CEO

ATTEST:

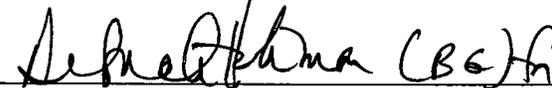
Byron Pope, Secretary of the Board of
Directors

LANDLORD:

THE PARKING AUTHORITY OF THE CITY
OF BEVERLY HILLS

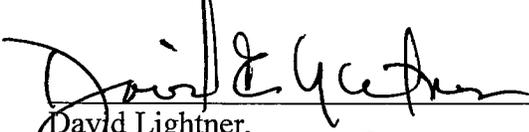
By: _____
Lili Bosse,
Chairman of the Board of Directors

APPROVED AS TO FORM:

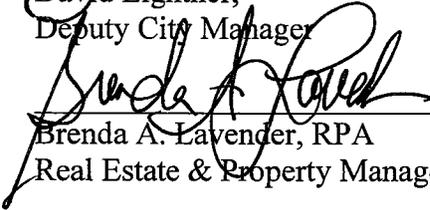

Laurence S. Wiener, Authority Counsel

APPROVED AS TO CONTENT:

Jeffrey Kolin, ICMA-CM,
Executive Director



David Lightner,
Deputy City Manager



Brenda A. Lavender, RPA
Real Estate & Property Manager

EXHIBIT "A"

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

(Attached.)

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION OF LEASE** (this “**Assignment**”), dated as of June 17, 2014 (the “**Effective Date**”), is made by and between **STROUK GROUP, LLC**, a California limited liability company (formerly known as Strouk Group Inc., a California corporation) (“**Assignor**”), and **SOUTHWEST WINE & SPIRITS, LLC**, a Delaware limited liability company (“**Assignee**”).

RECITALS

WHEREAS, Assignor and City of Beverly Hills, a municipal corporation (“**Landlord**”), are parties to that certain Lease dated September 27, 2011 (the “**Original Lease**”), as amended by that certain First Amendment of Lease dated December 18, 2012 (the “**First Amendment**”; the Original Lease as amended by the First Amendment is hereinafter referred to as the “**Lease**”); and

WHEREAS, pursuant to the Lease, Landlord has leased to Assignor certain retail space (the “**Premises**”) on the first floor of the building commonly known as 447 N. Canon Drive, Beverly Hills, California, and more particularly described in the Lease.

WHEREAS, Assignor desires to assign the Lease and all of its rights and obligations thereunder to Assignee and Assignee desires to accept such assignment and assume Assignor’s rights and obligations under the Lease, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and in consideration of Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Assignor and Assignee hereby agree as follows:

1. **Assignment**. Effective from and after the Effective Date, but subject to the receipt of Landlord’s consent as required pursuant to Section 20 of the Lease, Assignor hereby assigns, conveys, transfers and sets over unto Assignee all of Assignor’s rights, title and interests in, to and under the Lease and the leasehold estate in the Premises created thereby, including, without limitation, all of Assignor’s rights, title and interests in, to and under the amount of Twenty Thousand Five Hundred and No/100ths Dollars (\$20,500.00) deposited with Landlord as the security deposit (the “**Security Deposit**”) under the Lease.

2. **Assumption**. Assignee does hereby accept and assume from Assignor all right, title and interest so assigned under **Section 1** of this Assignment and hereby assumes and agrees to pay all sums and perform and fulfill all of the terms, covenants, conditions, and obligations required to be paid, performed and fulfilled by Assignor from and after the Effective Date, as tenant under the Lease.

3. **Assignee’s Indemnification of Assignor**. Assignee shall and does hereby indemnify Assignor against, and agrees to hold Assignor harmless of and from, all liabilities, obligations, actions, suits, proceedings or claims, and all losses, costs and expenses, including but not limited to reasonable attorneys’ fees, arising as a result of any act, omission or obligation

of Assignee arising or accruing with respect to the Lease and occurring or alleged to have occurred on or after the Effective Date.

4. **Assignor's Indemnification of Assignee.** Assignor shall and does hereby indemnify Assignee against, and agrees to hold Assignee harmless of and from, all liabilities, obligations, actions, suits, proceedings or claims, and all losses, costs and expenses, including but not limited to reasonable attorneys' fees, arising as a result of any act, omission or obligation of Assignor arising or accruing with respect to the Lease and occurring or alleged to have occurred prior to the Effective Date.

5. **No Prior Assignment.** Assignor represents that it has not previously assigned any of Assignor's rights, title and interests in, to and under the Lease and the leasehold estate in the Premises, including, without limitation, Assignor's rights, title and interests in, to or under the Security Deposit.

6. **Binding Effect.** This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

7. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without reference to any choice of laws provision contained therein.

8. **Counterparts/Facsimiles.** This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one and the same agreement. To facilitate execution of this Assignment, the parties may execute and exchange facsimile or electronic transmission (i.e., e-mail) counterparts of the signature pages and such counterparts shall serve as originals.

9. **Signing Authority.** Each individual executing this Assignment on behalf of Assignor and Assignee, respectively, represents and warrants that he or she is duly authorized to execute and deliver this Assignment on behalf of such party by all necessary corporate action on the part of such party.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment on the day and year first above written.

ASSIGNOR:

STROUK GROUP, LLC,
a California limited liability company

By: 
Name: Stephanie Strouk
Title: CEO

ASSIGNEE:

SOUTHWEST WINE & SPIRITS, LLC,
a Delaware limited liability company

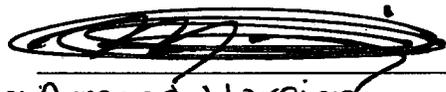
By: 
Name: Armand Marciano
Title: CEO

EXHIBIT "B"

FORM OF LEASE GUARANTY

(Attached.)

GUARANTY OF LEASE

THIS GUARANTY OF LEASE (“Guaranty”) is dated as of June 17, 2014 (the “Effective Date”) and is made by MAURICE MARCIANO and PAUL MARCIANO, jointly and severally (“Guarantor”), in favor of THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS (“Landlord”), in connection with that certain Lease dated September 27, 2011 between the City of Beverly Hills and Strouk Group, Inc. (“MM”) as amended by a First Amendment of Lease dated December 18, 2012, a Consent to Sublease Agreement and Clarification of Lease Operating Hours dated December 17, 2013 and a Second Amendment of Lease dated June 17, 2014 (the “Lease”), which is being assigned by MM to Southwest Wine & Spirits, LLC, a California limited liability company (“Tenant”) concurrently herewith. As a material inducement to, and in consideration of, Landlord consenting to said assignment, Landlord having indicated that it would not give such consent without the execution of this Guaranty, Guarantor does hereby agree with Landlord as follows:

1. Guarantor does hereby unconditionally and irrevocably guarantee, as a primary obligor and not as a surety, and promise to perform and be liable for any and all obligations and liabilities of Tenant under the terms of the Lease arising from and after the Effective Date and prior to the second anniversary of the Effective Date.
2. Guarantor does hereby agree that, without the consent of Guarantor and without affecting any of the obligations of Guarantor hereunder: (a) any term, covenant or condition of the Lease may be hereafter amended, compromised, released or otherwise altered by Landlord and Tenant, and Guarantor does guarantee and promise to perform all the obligations of “Tenant” under the Lease as so amended, compromised, released or altered; (b) any guarantor of or party to the Lease may be released, substituted or added; (c) any right or remedy under the Lease may be exercised, not exercised, impaired, modified, limited, destroyed or suspended; (d) Landlord or any other person acting on Landlord’s behalf may deal in any manner with Tenant, any guarantor, any party to the Lease or any other person; and (e) all or any part of the Premises or of the rights or liabilities of “Tenant” under the Lease may be sublet, assigned or assumed. This is a continuing guaranty.
3. Guarantor hereby waives and agrees not to assert or take advantage of (a) any right to require Landlord to proceed against Tenant or any other person or to pursue any other remedy before proceeding against Guarantor; (b) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other person; and (c) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant (other than any defense based on Landlord’s acts or omissions), of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement. Without in any manner limiting the generality of the foregoing, Guarantor hereby waives the benefits of the provisions of Sections 2809, 2810, 2819, 2845, 2849, 2850, 2899 and 3433 of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction.
4. Guarantor hereby waives and agrees not to assert or take advantage of any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Tenant or

other facts which increase the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind.

5. Until all Tenant's obligations under the Lease are fully performed, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor under this Guaranty; and (b) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant under, arising out of or related to the Lease or Tenant's use or occupancy of the Premises.

6. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor relating to the Lease shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord by law and/or in equity.

7. This Guaranty applies to, inures to the benefit of and binds all parties hereto, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns (including any purchaser at a judicial foreclosure or trustee's sale or a holder of a deed in lieu thereof). This Guaranty may be assigned by Landlord voluntarily or by operation of law.

8. Guarantor shall not, without the prior written consent of Landlord, commence, or join with any other person in commencing, any bankruptcy, reorganization or insolvency proceeding against Tenant. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Tenant, or by any defense which Tenant may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims which Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor and will assign to Landlord all rights of Guarantor thereunder. Landlord shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Landlord the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Landlord all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Landlord receives cash by reason of any such payment or distribution. If Landlord receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

9. Guarantor shall, upon ten (10) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, shall be audited by an independent certified public accountant.

10. As a further material part of the consideration to Landlord to enter into the Lease with Tenant, Guarantor agrees: (a) the law of the State of California shall govern all questions

with respect to the Guaranty; (b) any suit, action or proceeding arising directly or indirectly from the Guaranty, the Lease or the subject matter thereof shall be litigated only in courts located within the county and state in which the Premises is located; (c) Guarantor hereby irrevocably consents to the jurisdiction of any local, state or federal court located within the county and state in which the Premises is located; and (d) without limiting the generality of the foregoing, Guarantor hereby waives and agrees not to assert by way of motion, defense or otherwise in any suit, action or proceeding any claim that Guarantor is not personally subject to the jurisdiction of the above-named courts, that such suits, action or proceeding is brought in an inconvenient forum or that the venue of such action, suit or proceeding is improper.

11. This Guaranty shall constitute the entire agreement between Guarantor and the Landlord with respect to the subject matter hereof. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any Guarantor be released from any obligation hereunder except by a writing duly executed by Landlord. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof. Time is strictly of the essence under this Guaranty and any amendment, modification or revision hereof. If either party hereto participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees, collection costs and other costs incurred in and in preparation for the action. If there is more than one undersigned Guarantor, (a) the term "Guarantor", as used herein, shall include all of the undersigned; (b) each provision of this Guaranty shall be binding on each one of the undersigned, who shall be jointly and severally liable hereunder; and (c) Landlord shall have the right to join one or all of them in any proceeding or to proceed against them in any order.

12. Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and shall be delivered in the manner provided in the Lease for delivery of notices and addressed to the party to be notified at the address set forth below, or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days notice to the notifying party.

To Landlord:

The Parking Authority of the
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: Executive Director

To Guarantor:

Executed as of June 17, 2014.

MAURICE MARCIANO



PAUL MARCIANO

with respect to the Guaranty; (b) any suit, action or proceeding arising directly or indirectly from the Guaranty, the Lease or the subject matter thereof shall be litigated only in courts located within the county and state in which the Premises is located; (c) Guarantor hereby irrevocably consents to the jurisdiction of any local, state or federal court located within the county and state in which the Premises is located; and (d) without limiting the generality of the foregoing, Guarantor hereby waives and agrees not to assert by way of motion, defense or otherwise in any suit, action or proceeding any claim that Guarantor is not personally subject to the jurisdiction of the above-named courts, that such suits, action or proceeding is brought in an inconvenient forum or that the venue of such action, suit or proceeding is improper.

11. This Guaranty shall constitute the entire agreement between Guarantor and the Landlord with respect to the subject matter hereof. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any Guarantor be released from any obligation hereunder except by a writing duly executed by Landlord. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof. Time is strictly of the essence under this Guaranty and any amendment, modification or revision hereof. If either party hereto participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees, collection costs and other costs incurred in and in preparation for the action. If there is more than one undersigned Guarantor, (a) the term "Guarantor", as used herein, shall include all of the undersigned; (b) each provision of this Guaranty shall be binding on each one of the undersigned, who shall be jointly and severally liable hereunder; and (c) Landlord shall have the right to join one or all of them in any proceeding or to proceed against them in any order.

12. Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and shall be delivered in the manner provided in the Lease for delivery of notices and addressed to the party to be notified at the address set forth below, or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days notice to the notifying party.

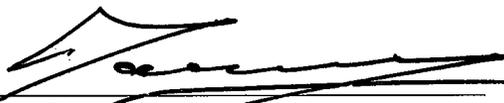
To Landlord:

The Parking Authority of the
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: Executive Director

To Guarantor:

144 S. Beverly Dr., Ste. 600
Beverly Hills, CA 90212

Executed as of June 17, 2014.


MAURICE MARCIANO

PAUL MARCIANO

EXHIBIT "C"

FORM OF SECOND AMENDMENT TO LEASE

(Attached.)

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

The Parking Authority of the
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: City Clerk

[Space Above For Recorder's Use Only]

The undersigned declare that this Second Amendment of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

SECOND AMENDMENT OF LEASE

This SECOND AMENDMENT OF LEASE (this "Second Amendment") is dated as of June 17, 2014, and is entered into by and between THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS ("Landlord"), and SOUTHWEST WINE & SPIRITS, LLC, a California limited liability company ("Tenant").

RECITALS

A. Tenant's predecessor-in-interest (Strouk Group, LLC, f/k/a Strouk Group, Inc. (the "Original Tenant")) and Landlord's predecessor-in-interest (the City of Beverly Hills) entered into that certain Lease dated September 27, 2011 which was amended by a First Amendment of Lease dated December 18, 2012 (as amended, the "Lease"), pursuant to which Landlord leased and demised to Tenant, and Tenant leased and accepted from Landlord, certain space in the building located in the City of Beverly Hills, County of Los Angeles, State of California, commonly known as 447 N. Canon Drive (the "Property"), as provided in the Lease; and

B. A Memorandum of Lease dated September 27, 2011 was recorded on December 16, 2011 as Document No. 20111710796 in the Official Records of Los Angeles County, California; and

C. Tenant and Landlord now desire to further amend the Lease as hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Landlord agree as follows:

1. Rent. Section 1(e) of the Lease is hereby deleted and is replaced with the following:

During the first fourteen (14) calendar months of the Term, Monthly Rent shall be abated (the "Abated Rent"). Monthly Rent shall be as follows:

	<u>Monthly Rent</u>
Month 15 – June 16, 2014	Paid
June 17, 2014 – July 30, 2014	\$25,120.00
August 1, 2015 – July 30, 2016	\$26,124.80
August 1, 2016 – July 30, 2017	\$27,169.79

On August 1, 2017 and each anniversary thereof, Monthly Rent shall increase by the percentage increase in the CPI over the previous year (as determined by Landlord), but no annual increase shall be more than three percent (3%) nor less than one and one half percent (1.5%). As used herein, the term "CPI" shall have the meaning set forth in Section 6(b) below.

2. Percentage Rent. As of June 17, 2014, the first paragraph of Section 5(b) of the Lease and the definition of "Gross Sales" are deleted and the following paragraphs are substituted in lieu thereof:

In addition to Monthly Rent, commencing as of the beginning of the second year of the Term, Tenant shall pay to Landlord as percentage rent ("Percentage Rent") the amount by which (a) four and one half percent (4.5%) of Tenant's Gross Sales (as defined below) made from or upon the Premises during each Lease Year (as defined below) that are in excess of \$6,000,000 and less than \$10,000,000 exceeds (b) Monthly Rent and CAM Charges for the applicable Lease Year. Such payments shall be made on an quarterly basis, as hereinafter described, subject to annual reconciliation as hereinafter described. Percentage Rent shall be computed on an annualized basis for each quarter (the "Percentage Rent Period") of each Lease Year. On or before the last day of the calendar month immediately following the close of each quarterly Percentage Rent Period, Tenant shall make the applicable Percentage Rent payment.

"Gross Sales" of Tenant means the gross selling price of all food, beverages, merchandise and services (including, without limitation, cooking demonstration fees and cooking instruction/class fees) sold, leased, licensed, or delivered in or from the Premises by Tenant, its permitted subtenants, licensees, or concessionaires, whether for cash or on credit (whether collected or not), including the gross amount received by reason of orders taken on the Premises although filled elsewhere, and whether made by store personnel or vending machines, and including sales by auction in the City of Beverly Hills, online sales involving any computer on the Premises or located in the City of Beverly Hills, and in-store purchases that are shipped out of town. Any transaction on an installment basis, including, without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes. Gross Sales also shall include any sums that Tenant receives from pay telephones, stamp machines, music machines, amusement machines, or public toilet locks.

3. Permitted Use. As of June 17, 2014, Section 1(h) of the Lease is deleted and the following substituted in lieu thereof:

(h) Permitted Use: A restaurant operating under the name of “Wally’s Vinoteca” serving lunch and dinner, cooking demonstrations, cooking classes, wine tastings, a gourmet food shop, and the sale of wine and spirits.

4. Continuous Operation; Hours. As of June 17, 2014, Section 7(b) of the Lease is deleted and the following substituted in lieu thereof:

(b) Except for the period of time from Tenant’s commencement of the Additional Work (defined in Section 4) until the Completion Deadline (defined in Section 4), Tenant shall continuously operate its business in the Premises from at least 10 a.m. through 11 p.m. on Sundays, Mondays, Tuesdays and Wednesdays, and from at least 10 a.m. to 1:30 a.m. on Thursdays, Fridays and Saturdays, subject to applicable laws, interruption by Landlord in connection with Landlord’s exercise or performance of its obligations under this Lease, and other interruptions caused by events or circumstances beyond the control of Tenant (excluding the financial condition of Tenant and level of success of Tenant’s business at the Premises).

5. Extension Option. Notwithstanding anything to the contrary contained in the last sentence of Section 3(c) of the Lease, Tenant shall have the continued right to exercise any and all extension options described in the Lease, notwithstanding the assignment of the Lease from the Original Tenant to Tenant. For purposes of the last sentence of Section 3(c) of the Lease, Tenant shall be considered the original Tenant under the Lease.

6. Additional Improvement Requirement; Completion Deadline. The following is hereby added to the end of Section 4 of the Lease:

In addition to Tenant’s initial improvements, Tenant shall complete additional improvements to the Premises to prepare them for operation by Southwest Wine & Spirits, LLC, as assignee of this Lease (the “Additional Work”) on or before October 30, 2014, as extended by delays beyond the control of Tenant excluding the financial condition of Tenant and Tenant’s inability to pay for such improvements (the “Completion Deadline”). The Additional Work shall cost at least One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00), as shown by reasonable evidence delivered by Tenant to Landlord by the Completion Deadline. If the Additional Work is not completed by December 1, 2014, then Landlord may in its sole and absolute discretion terminate this Lease by written notice to Tenant. Additionally, until the Lease is so terminated, Tenant shall pay to Landlord the sum of Four Hundred Eighteen and 67/100 (\$418.67) for each day after the Completion Deadline during which the Additional Work has not been completed as liquidated damages. LANDLORD AND TENANT HEREBY STIPULATE AND AGREE THAT SUCH DAILY SUM IS A REASONABLE ESTIMATE OF DAMAGES THAT WOULD BE INCURRED BY LANDLORD AS A RESULT OF TENANT’S FAILURE TO MEET THE COMPLETION DEADLINE, AND THAT ACTUAL DAMAGES WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO DETERMINE (AMONG OTHER THINGS, DUE TO THE ASSIGNMENT OF THIS LEASE BY STROUK

GROUP, LLC TO TENANT, THE ADDITIONAL WORK, AND THE EFFECTS ON PERCENTAGE RENT, ON BEVERLY HILLS RESIDENTS AND ON LANDLORD AS A PUBLIC ENTITY OF TENANT'S FAILURE TO OPEN AND/OR FULLY OPERATE BY THE COMPLETION DATE), AND TENANT AGREES THAT THE FOREGOING LIQUIDATED DAMAGES ARE NOT A FORFEITURE OR PENALTY.

Landlord Initials

Tenant Initials

7. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

8. Full Force and Effect. Notwithstanding anything to the contrary, and except as expressly provided herein, the Lease shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first written above.

LANDLORD:

TENANT:

**THE PARKING AUTHORITY OF THE
CITY OF BEVERLY HILLS**

SOUTHWEST WINE & SPIRITS, LLC

By: _____
Lili Bosse,
Chairman

By: _____
Print Name: _____
Title: _____

ATTEST:

(SEAL)
Byron Pope,
Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONSENT:

Laurence S. Wiener
City Attorney

Jeffrey Kolin, ICMA-CM,
Executive Director

David Lightner
Deputy City Manager

Brenda A. Lavender, RPA
Real Estate & Property Manager

Attachment 2

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

The Parking Authority of the
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: City Clerk

[Space Above For Recorder's Use Only]

The undersigned declare that this Second Amendment of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

SECOND AMENDMENT OF LEASE

This SECOND AMENDMENT OF LEASE (this "Second Amendment") is dated as of June 17, 2014, and is entered into by and between THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS ("Landlord"), and SOUTHWEST WINE & SPIRITS, LLC, a California limited liability company ("Tenant").

RECITALS

A. Tenant's predecessor-in-interest (Strouk Group, LLC, f/k/a Strouk Group, Inc. (the "Original Tenant")) and Landlord's predecessor-in-interest (the City of Beverly Hills) entered into that certain Lease dated September 27, 2011 which was amended by a First Amendment of Lease dated December 18, 2012 (as amended, the "Lease"), pursuant to which Landlord leased and demised to Tenant, and Tenant leased and accepted from Landlord, certain space in the building located in the City of Beverly Hills, County of Los Angeles, State of California, commonly known as 447 N. Canon Drive (the "Property"), as provided in the Lease; and

B. A Memorandum of Lease dated September 27, 2011 was recorded on December 16, 2011 as Document No. 20111710796 in the Official Records of Los Angeles County, California; and

C. Tenant and Landlord now desire to further amend the Lease as hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Landlord agree as follows:

1. Rent. Section 1(e) of the Lease is hereby deleted and is replaced with the following:

During the first fourteen (14) calendar months of the Term, Monthly Rent shall be abated (the "Abated Rent"). Monthly Rent shall be as follows:

	<u>Monthly Rent</u>
Month 15 – June 16, 2014	Paid
June 17, 2014 – July 30, 2014	\$25,120.00
August 1, 2015 – July 30, 2016	\$26,124.80
August 1, 2016 – July 30, 2017	\$27,169.79

On August 1, 2017 and each anniversary thereof, Monthly Rent shall increase by the percentage increase in the CPI over the previous year (as determined by Landlord), but no annual increase shall be more than three percent (3%) nor less than one and one half percent (1.5%). As used herein, the term "CPI" shall have the meaning set forth in Section 6(b) below.

2. Percentage Rent. As of June 17, 2014, the first paragraph of Section 5(b) of the Lease and the definition of "Gross Sales" are deleted and the following paragraphs are substituted in lieu thereof:

In addition to Monthly Rent, commencing as of the beginning of the second year of the Term, Tenant shall pay to Landlord as percentage rent ("Percentage Rent") the amount by which (a) four and one half percent (4.5%) of Tenant's Gross Sales (as defined below) made from or upon the Premises during each Lease Year (as defined below) that are in excess of \$6,000,000 and less than \$10,000,000 exceeds (b) Monthly Rent and CAM Charges for the applicable Lease Year. Such payments shall be made on a quarterly basis, as hereinafter described, subject to annual reconciliation as hereinafter described. Percentage Rent shall be computed on an annualized basis for each quarter (the "Percentage Rent Period") of each Lease Year. On or before the last day of the calendar month immediately following the close of each quarterly Percentage Rent Period, Tenant shall make the applicable Percentage Rent payment.

"Gross Sales" of Tenant means the gross selling price of all food, beverages, merchandise and services (including, without limitation, cooking demonstration fees and cooking instruction/class fees) sold, leased, licensed, or delivered in or from the Premises by Tenant, its permitted subtenants, licensees, or concessionaires, whether for cash or on credit (whether collected or not), including the gross amount received by reason of orders taken on the Premises although filled elsewhere, and whether made by store personnel or vending machines, and including sales by auction in the City of Beverly Hills, online sales involving any computer on the Premises or located in the City of Beverly Hills, and in-store purchases that are shipped out of town. Any transaction on an installment basis, including, without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes. Gross Sales also shall include any sums that Tenant receives from pay telephones, stamp machines, music machines, amusement machines, or public toilet locks.

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(b) Except for the period of time from Tenant's commencement of the Additional Work (defined in Section 4) until the Completion Deadline (defined in Section 4), Tenant shall continuously operate its business in the Premises from at least 10 a.m. through 11 p.m. on Sundays, Mondays, Tuesdays and Wednesdays, and from at least 10 a.m. to 1:30 a.m. on Thursdays, Fridays and Saturdays, subject to applicable laws, interruption by Landlord in connection with Landlord's exercise or performance of its obligations under this Lease, and other interruptions caused by events or circumstances beyond the control of Tenant (excluding the financial condition of Tenant and level of success of Tenant's business at the Premises).

5. Extension Option. Notwithstanding anything to the contrary contained in the last sentence of Section 3(c) of the Lease, Tenant shall have the continued right to exercise any and all extension options described in the Lease, notwithstanding the assignment of the Lease from the Original Tenant to Tenant. For purposes of the last sentence of Section 3(c) of the Lease, Tenant shall be considered the original Tenant under the Lease.

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GROUP, LLC TO TENANT, THE ADDITIONAL WORK, AND THE EFFECTS ON PERCENTAGE RENT, ON BEVERLY HILLS RESIDENTS AND ON LANDLORD AS A PUBLIC ENTITY OF TENANT'S FAILURE TO OPEN AND/OR FULLY OPERATE BY THE COMPLETION DATE), AND TENANT AGREES THAT THE FOREGOING LIQUIDATED DAMAGES ARE NOT A FORFEITURE OR PENALTY.

Landlord Initials

Tenant Initials

7. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

8. Full Force and Effect. Notwithstanding anything to the contrary, and except as expressly provided herein, the Lease shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first written above.

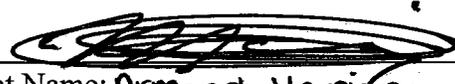
LANDLORD:

TENANT:

**THE PARKING AUTHORITY OF THE
CITY OF BEVERLY HILLS**

SOUTHWEST WINE & SPIRITS, LLC

By: _____
Lili Bosse,
Chairman

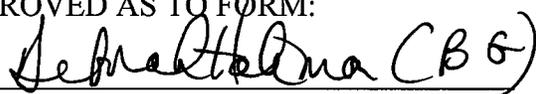
By: 
Print Name: Armand Marciano
Title: CEO

ATTEST:

(SEAL)
Byron Pope,
Clerk

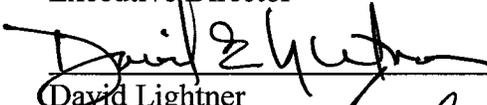
APPROVED AS TO FORM:

APPROVED AS TO CONSENT:

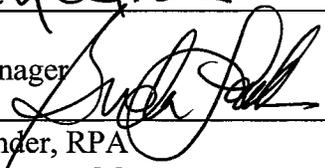


Laurence S. Wiener
City Attorney

Jeffrey Kolin, ICMA-CM,
Executive Director



David Lightner
Deputy City Manager



Brenda A. Lavender, RPA
Real Estate & Property Manager

ACKNOWLEDGEMENT

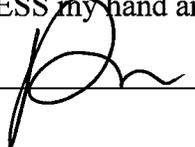
State of California)
County of Los Angeles)

On June 9th, 2014, before me, Ronita Rabbani, Notary Public,
(insert name and title of the officer)

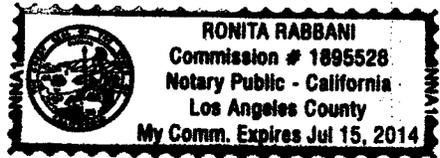
Notary Public, personally appeared Armand Marciano, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



Attachment 3

J. Daniel Davis

Wine, Beer and Distilled Spirits Law Counsel

2110 Jackson Street, # 603
San Francisco, California 94115
Phone: 415 505 6156
E-Mail: dandavisabclaw@sbcglobal.net

VIA ELECTRONIC MAIL
May 20, 2014

City of Beverly Hills Parking Authority
455 N. Rexford Dr. #400
Beverly Hills, CA 90210

City of Beverly Hills Parking Authority:

I have practiced law in California for over 20 years, virtually exclusively in the area of alcoholic beverage law - including tied-house law. Tied-house law limits when a producer or wholesaler of alcoholic beverages can own an interest in a retailer of alcoholic beverages.

This letter corrects certain incorrect or incomplete information about alcoholic beverage law that was presented at the May 6, 2014 Beverly Hills City Council Study Session.

Facts

- The City of Beverly Hills leases a premises located at 447 N. Canon Drive, Beverly Hills, California ("Leased Premises") to Strouk Group, Inc. ("Beverly Hills Lease").
- The California Department of Alcoholic Beverage Control License Query System reports that Strouk Group, Inc. is issued a Type 41 - On-sale beer and wine eating place license (License Number 516113) at the Leased Premises.
- Strouk Group, Inc. seeks City of Beverly Hills approval of its assignment of the Beverly Hills Lease to Southwest Wine & Spirits LLC, a California retailer issued on-sale and off-sale retail licenses at 2107 Westwood Blvd., Los Angeles, California (License Numbers 531944, 531937).
- Maurice Marciano is an officer of and owns an interest in Napa Vineland Winery LLC, a California winery (License Number 468384).
- Maurice Marciano owns an interest in Southwest Wine & Spirits LLC and is a guarantor of in favor of the City of Beverly Hills in connection with the assigned lease.

Issue

Concerns have been raised that Mr. Marciano, as an owner and officer of a winery, cannot legally own an interest in Southwest Wine & Spirits LLC and that this illegal interest should prevent approval of assignment of the Beverly Hills Lease.

The Law

The California tied-house law¹ regulates when a winery or its officers can own an alcoholic beverage retailer. The tied-house laws begin with a broad prohibition that:

[No] officer ... of any [winery] shall [h]old the ownership, directly or indirectly, of any interest in [a retailer] . . . or guarantee . . . the fulfillment of any financial obligation of, any [retailer].²

If this were the only California tied-house law, Mr. Marciano, as an officer of a winery, could not own an interest in the retailer, Southwest Wine & Spirits LLC. This is not the only California tied-house law.

California tied-house law has a number of exceptions to the broad prohibition described above. These include an exception that permits Mr. Marciano to own an interest in Southwest Wine & Spirits LLC that is already issued retailer licenses in California and will be issued the retailer license at the Leased Premises:

[A]ny officer ... of [a winery] may hold, directly or indirectly, the ownership of any interest in an on-sale license, provided:

(1) The on-sale licensed premises are licensed as a bona fide public eating place

....

(2) The on-sale licensed premises purchases all alcoholic beverages sold and served at the on-sale licensed premises only from California wholesale licensees ... unless one of the following conditions is met:

(A) The wine purchased is [produced or packaged by the winery] that holds an interest in the on-sale license.

(B) The wine is produced or bottled by, and is purchased from, a [winery] who sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that [winery].

(C) The wine is purchased by an on-sale licensee in whose on-sale license a [winery] holds an interest, provided that the [winery] sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that [winery].

(3) The [winery] and any officer, director, or agent of that [winery], whether individually or in the aggregate, do not sell and serve the wine products produced or bottled under any brand or trade name owned by that [winery] through more than two on-sale licensed premises in which any of them holds an ownership interest.

[and]

(4) The number of wine items by brand offered for sale by the on-sale licensed premises that are produced, bottled, processed, imported, or sold by the [winery] . . . does not exceed 15 percent of the total wine items by brand listed and offered for sale in the licensed bona fide public eating place selling and serving that wine. *Cal. Bus. & Prof. Code § 25503.15*³

Analysis and Conclusion

The Leased Premises is issued a Type 41 - On-sale beer & wine eating place license. The “eating place” designation means this is license issued to a “bona fide eating place” defined as a licensed premises where meals are served to guests:

“Bona fide public eating place” means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. *Cal. Bus. & Prof. Code § 23038*

The Leased Premises is licensed as a bona fide eating place and meets the first condition for the exception to permit Mr. Marciano’s ownership in Southwest Wine & Spirits LLC at the Leased Premises.

The remaining three conditions that must be met to permit Mr. Marciano’s ownership impose limits on what wines the winery-affiliated retailer, Southwest Wine & Spirits LLC, can buy and sell at the Leased Premises:

- 1) The retailer can only purchase wines from wholesalers unless the wine is from: a) the winery affiliated with the retailer; b) a relatively small winery; or c) a relatively small, affiliated winery;
- 2) No more than two on-sale retailers affiliated with a winery can offer the affiliated winery’s wine; and
- 3) The retailer’s sales of an affiliated winery’s wine cannot be more than 15% of the wine brands the retailer lists and offers.

Southwest Wine & Spirits LLC is already familiar with and complies with similar buy and sell limitations imposed on its Type 42 – On-sale beer & wine – public premises license at 2107 Westwood Blvd., Los Angeles, California (License Number 531944). This license is issued under a different tied-house exception, *Cal. Bus. & Prof. Code §§ 25503.30*⁴, that permits a winery to own a retailer that is not a bona fide eating place. This exception has similar buy and sell limitations.

Notwithstanding his interests in a winery, Mr. Marciano can legally own an interest in this eating place license at the Leased Premises under the law described above. Mr. Marciano’s legal interest does not impact the lease assignment at the Leased Premises.

The “Permitted Use” definition under the Second Amendment of Lease between The Parking Authority of the City of Beverly Hills and Southwest Wine & Spirits LLC dated as of May 6, 2014 states the Permitted Use of the property is:

Sales of wine, spirits, specialty cheese, fresh bread, coffee, caviar and similar products typically associated with a fine wine and spirits store, and a kitchen with lunch, dinner and bar service.

This definition includes sales of spirits as well as wine. This will require the California Department of Alcoholic Beverage Control to issue a Type 41 - On-sale general eating place license at the Leased Premises. Mr. Marciano is permitted to own an interest in this license under the same law described above that permits his ownership of an On-sale beer & wine eating place license.

This Permitted Use includes sales of wines and spirits for consumption off the premises. This will require a Type 21 – Off-sale general license at the Leased Premise, like the license issued to Southwest Wine & Spirits LLC in Los Angeles. The law that permits Mr. Marciano to own an interest in this off-sale license is simpler with far fewer conditions than the on-sale license exceptions require. *Cal. Bus. & Prof. Code § 23362* simply states:

Notwithstanding any other provisions of [The Alcoholic Beverage Control Act], a [winery] may be issued and may hold an off-sale general license or a retail package off-sale beer and wine license.

Federal Law

To be complete, a brief discussion of federal tied-house law follows. California tied-house law generally prohibits a winery from owning a retailer. Federal tied-house law generally prohibits a winery from owning a retailer, but only if: 1) the ownership induces the retailer to purchase wine from that winery to the exclusion of wine sold by other wineries; and 2) interstate commerce is impacted.⁵

The additional “exclusion” and “interstate” requirements for a federal tied-house violation make it much more difficult to establish than a California tied-house violation. For this reason, any relationship between a California winery and a California retailer that complies with California tied-house law generally complies with federal tied-house law. Additionally, the California law that permits a winery to own an on-sale retailer, limits the wines from the owner/winery that the retailer can buy and sell. This makes the claim of exclusion necessary to find a federal tied-house violation very difficult to establish.

Mr. Marciano's interest in Southwest Wine & Spirits LLC does not violate federal tied-house law.

Minors allowed in premises with bars

There is often confusion that California law prohibits a person under 21 from entering any premises with a bar. This is wrong.

California alcoholic beverage law prohibits minors from entering certain retailer premises that do not serve meals.⁶ Premises that do not serve meals often have bars, but it is the fact that no meals are served, not the fact that there is a bar, that makes no minors allowed.

The Beverly Hills lease covers an "eating place" where minors are allowed even when the place has a bar.

I am available to provide any further information that may be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Daniel Davis". The signature is written in a cursive, flowing style.

J. Daniel Davis
Wine, Beer and Distilled Spirits Law Counsel

¹ Cal. Bus. & Prof. Code § 25500 et. seq.

² Cal. Bus. & Prof. Code §§ 25500 contains the general prohibition and states:

- (a) No manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person shall:
- (1) Hold the ownership, directly or indirectly, of any interest in any on-sale license.
 - (2) Furnish, give, or lend any money or other thing of value, directly or indirectly, to, or guarantee the repayment of any loan or the fulfillment of any financial obligation of, any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises.
 - (3) Own any interest, directly or indirectly, in the business, furniture, fixtures, refrigeration equipment, signs, except signs for interior use mentioned in subdivision (g) of Section 25503, or lease in or of any premises operated or maintained under any on-sale license for the sale of alcoholic beverages for consumption on the premises where sold; or own any interest, directly or indirectly, in realty acquired after June 13, 1935, upon which on-sale premises are maintained unless the holding of the interest is permitted in accordance with rules of the department.

³ Cal. Bus. & Prof. Code §§ 25503.15 contains the exception and states:

- (b) Notwithstanding any other provision of this division, any licensed winegrower or any winegrower who has a wholesale license, or any officer, director, or agent of that person, may hold, directly or indirectly, the ownership of any interest in an on-sale license, provided that each of the following conditions is met:
- (1) The on-sale licensed premises are licensed as a bona fide public eating place as defined in Section 23038, or as a bona fide bed and breakfast inn as defined in Section 24045.11.
 - (2) The on-sale licensed premises purchases all alcoholic beverages sold and served at the on-sale licensed premises only from California wholesale licensees, other than the licensed winegrower who has a wholesale license and an interest in an on-sale license, unless one of the following conditions is met:
 - (A) The wine purchased is produced or bottled by, or produced and packaged for, the same licensed winegrower that holds an interest in the on-sale license.
 - (B) The wine is produced or bottled by, and is purchased from, a licensed winegrower who sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.
 - (C) The wine is purchased by an on-sale licensee in whose on-sale license a licensed winegrower holds an interest, provided that the winegrower sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.
 - (3) The licensed winegrower and any officer, director, or agent of that person, whether individually or in the aggregate, do not sell and serve the wine products produced or bottled under any brand or trade name owned by that winegrower through more than two on-sale licensed premises in which any of them holds an ownership interest.
 - (4) The number of wine items by brand offered for sale by the on-sale licensed premises that are produced, bottled, processed, imported, or sold by the licensed winegrower or by any person holding any interest in the winegrower does not exceed 15 percent of the total

wine items by brand listed and offered for sale in the licensed bona fide public eating place selling and serving that wine. This paragraph does not apply to a bona fide bed and breakfast inn.

⁴ Cal. Bus. & Prof. Code § 25503.30 states:

(a) Notwithstanding any other provision of this division, a winegrower or one or more of its direct or indirect subsidiaries of which the winegrower owns not less than a 51-percent interest, who manufactures, produces, bottles, processes, imports, or sells wine and distilled spirits made from grape wine or other grape products only, under a winegrower's license or any other license issued pursuant to this division, or any officer or director of, or any person holding any interest in, those persons may serve as an officer or director of, and may hold the ownership of any interest or any financial or representative relationship in, any on-sale license, or the business conducted under that license, provided that, except in the case of a holder of on-sale general licenses for airplanes and duplicate on-sale general licenses for air common carriers, all of the following conditions are met:

(1) The on-sale licensee purchases all alcoholic beverages sold and served only from California wholesale licensees.

(2) The number of wine items by brand offered for sale by the on-sale licensee that are produced, bottled, processed, imported, or sold by the licensed winegrower or by the subsidiary of which the winegrower owns not less than 51 percent, or by any officer or director of, or by any person holding any interest in, those persons does not exceed 15 percent of the total wine items by brand listed and offered for sale by the on-sale licensee selling and serving that wine. Notwithstanding paragraph (1), wine sold pursuant to this provision may be purchased from a California winegrower so long as the wine purchased is produced or bottled by, or produced and packaged for, the same licensed winegrower that holds an interest in the on-sale license and such direct sales do not involve more than two on-sale licenses in which the winegrower or any person holding an interest in the winegrower holds any interest, directly or indirectly, either individually or in combination or together with each other in the aggregate.

(3) None of the persons specified in this section may have any of the interests specified in this section in more than two on-sale licenses.

⁵ Federal tied-house law 27 USCS § 205 states:

It shall be unlawful for any [winery], directly or indirectly or through an affiliate:

(b) "Tied house". To induce through any of the following means, any retailer, . . . to purchase [beverage alcohol] from such person to the exclusion in whole or in part of [beverage alcohol] sold or offered for sale by other persons in interstate or foreign commerce. . . : (1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business;

⁶ Cal. Bus. & Prof. Code § 25665 states:

Any licensee under an on-sale license issued for public premises, as defined in Section 23039, who permits a person under the age of 21 years to enter and remain in the licensed premises without lawful business therein is guilty of a misdemeanor.

Here is the Cal. Bus. & Prof. Code §§ 23039 definition of a public premises where a minor is not allowed:

Premises licensed with any type of license other than an on-sale beer license, and maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food shall not be sold or served to the public as in a bona fide public eating place

Here is the Cal. Bus. & Prof. Code §§ 23038 definition of a bona fide public eating place where a minor is allowed:

“Bona fide public eating place” means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health.