

CONSENT TO ASSIGNMENT OF PERCENTAGE RENT LEASE

THIS CONSENT TO ASSIGNMENT OF LEASE AGREEMENT ("**Consent**") is entered into as of the date it is signed and approved as to form by the City Attorney's Office ("**Effective Date**"), by and between the CITY OF SAN DIEGO, a California municipal corporation ("**City**"), INVITA COFFEE LLC, a Delaware limited liability company ("**Assignor**"), and SAN PASQUAL REALTY LLC, a California limited liability company ("**Assignee**"), in relation to that certain Percentage Rate Lease agreement dated November 17, 1999, and filed with the Office of the City Clerk on October 18, 1999 as Document No. RR-292312 (as amended and assigned, the "**Lease**") between City, as lessor, and Assignor, as lessee, regarding that certain approximately 70.17 acres of real property in the San Pasqual Valley, County of San Diego, California, further described and depicted in Exhibit A of the Lease (the "**Premises**"). Assignor requests City's consent to assign all of Assignor's right, title, and interest in the Lease to Assignee, and for Assignee to assume all obligations of the "**Lessee**" under the Lease from and after the Effective Date of this Consent.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, City and Assignor agree as follows:

1. Consent to Assignment. City, as lessor under the Lease, consents to the assignment of the Lease to Assignee pursuant to that certain Assignment and Assumption Agreement ("**Assignment Agreement**") between Assignor and Assignee dated October 9, 2024. A true and correct copy of the Assignment Agreement is attached to this Consent as Exhibit A.
2. Assumption. Assignee expressly assumes and agrees for the benefit of City to be bound by, and to perform and comply with, every obligation of the "**Lessee**" under the Lease.
3. Subsequent Assignments. This Consent does not constitute City's consent to any other or subsequent licensing, subletting, or assignment and does not relieve Assignee or any person claiming under or through Assignee of the obligation to obtain City's consent to any future assignment or sublease, if and to the extent City's consent is required by the terms of the Lease.
4. Consideration for Assignment. Assignor represents and warrants to City that there are no additional payments of rent or any other consideration of any type that has been paid, is payable, or may become payable by Assignee or any other person to Assignor in connection with the assignment of the Lease to Assignee. Thus, Assignor is not obligated to remit to City any amount pursuant to Section 4.8 of the Lease concurrently with the execution of this Consent as a condition of City granting this Consent.
5. Brokerage Commission. Assignor acknowledges and agrees that City will not be liable for any brokerage commission or finder's fee in connection with the assignment of the Lease to Assignee or this Consent. Assignor agrees to protect, defend, indemnify, and hold City harmless from all brokerage commissions, finder's fees, or similar obligations in connection with the assignment of the Lease to Assignee or this Consent, and from all costs or expenses (including attorneys' fees) incurred by City in resisting all claims for brokerage commissions, finder's fees, or similar obligations. The provisions of this Section 5 shall survive the expiration or earlier termination of both the Assignment Agreement and this Consent.
6. Controlling Law. The terms and provisions of this Consent will be construed in accordance with and will be governed by the laws of the State of California.

7. Captions. Captions to the sections in this Consent are included for convenience only and do not modify any of the terms of this Consent.

8. Entire Agreement; Waiver. This Consent constitutes the final, complete, and exclusive statement with the City to this Consent pertaining to the terms of City's consent to the assignment of the Lease to Assignee pursuant to the Assignment Agreement, supersedes all prior and contemporaneous understandings or agreements with the City relating to the Assignment Agreement, and is binding on and inures to the benefit of their respective heirs, representatives, successors, and assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. Any agreement made after the date of this Consent is ineffective to modify, waive, or terminate this Consent, in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent, and specifically states that agreement modifies this Consent.

9. Release of Assignor. As of the Effective Date of this Consent, and notwithstanding any provision to the contrary in the Lease or any other agreement between Assignor and City, Assignor shall be fully released and discharged from any and all obligations of a "Lessee," "Assignor," "Assignee," or any other party under the Lease or such agreement.

10. No Fee Title Encumbrance. Nothing in this Consent or any document referenced in this Consent is intended to create or authorize the creation of any transfer, lien, or encumbrance affecting the fee title to the Premises.

11. Assignor Liability. Notwithstanding anything to the contrary in this Consent or the Assignment Agreement, Assignor agrees that, as between City and Assignor, Assignor is responsible for all obligations of "Lessee" accruing or arising under the Lease prior to the effective date of the transfer of all Assignor's rights, title, or interests under the Lease to Assignee under the Assignment Agreement and this Consent.

[Remainder of page intentionally blank. Signatures appear on the following pages.]

**SIGNATURE PAGE
TO
CONSENT TO ASSIGNMENT OF PERCENTAGE RATE LEASE**

City, Assignor, and Assignee sign and enter into this Consent by and through the signatures of their respective authorized representatives set forth below:

City:

THE CITY OF SAN DIEGO, a California
municipal corporation

By: _____

Lucy Contreras

Lucy Contreras
Deputy Director
Department of Real Estate and Airport
Management

Assignor:

INVITA COFFEE, LLC, a Delaware limited
liability company

By: _____

DocuSigned by:

Sara De Luca

3DC27E532EC0404

Name: Sara De Luca
Title: Manager

DS
CD

Initial
dl

Assignee:

SAN PASQUAL REALTY LLC, a California
limited liability company

By: _____

DocuSigned by:

Sara De Luca

3DC27E532EC0404

Name: Sara De Luca
Title: Manager

DS
CD

Initial
dl

Approved as to form on

Oct. 17, 2024 :

MARA W. ELLIOTT, City Attorney

By: _____

Brian Byun

Brian Byun
Deputy City Attorney

**EXHIBIT A
TO
CONSENT TO ASSIGNMENT OF PERCENTAGE RATE LEASE**

ASSIGNMENT AND ASSUMPTION AGREEMENT

[Attached behind this cover page]

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment") is made as of October 9, 2024 by and between Invita Coffee LLC, a Delaware limited liability company ("Assignor"), and San Pasqual Realty LLC, a California limited liability company ("Assignee").

RECITALS:

WHEREAS, Assignor is the owner of the Orfila Winery in Escondido, California (the "Business"); and

WHEREAS, one of the assets of Assignor in conjunction with the Business is that certain Percentage Rate Lease agreement dated November 17, 1999, and filed with the Office of the City Clerk on October 18, 1999 as Document No. RR-292312 (as amended, the "Lease") between the City of San Diego, as lessor, and Assignor, as lessee, regarding that certain approximately 70.17 acres of real property in the San Pasqual Valley, County of San Diego, California, further described and depicted in Exhibit A of the Lease; and

WHEREAS, Assignor now wishes to transfer and assign its right, title and interest in and to the Business, including without limitation Assignor's rights to and in the Lease, to Assignee, and Assignee wishes to assume prospectively all of Assignor's obligations and liabilities with respect to the Business and the Lease.

NOW THEREFORE, Assignor and Assignee agree as follows:

1. Assignment to Assignee. Effective as of the date hereof (the "Effective Date"), Assignor does hereby assign, transfer, grant, convey and set over unto Assignee all of its right, title, and interest in, to and under all of Assignor's tangible and intangible assets used for and in conjunction with the Business located at the Business premises, including without limitation the leasehold interest under the Lease and all of the right, title, estate, interest, benefits and privileges of Assignor under the Lease.

2. Assumption by Assignee. Assignee does hereby accept the foregoing assignment and hereby assumes and agrees to perform and to be bound by all of the terms, covenants, conditions and obligations imposed upon Assignor under the Lease arising and accruing on and after the date hereof.

3. Indemnification by Assignor. Assignor hereby agrees to indemnify, defend and hold harmless Assignee, and its shareholders, directors and officers, from and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees) arising out of or relating to the breach by Assignor of any of the obligations, terms and/or covenants under or pursuant to the Lease, which obligations, terms and/or covenants accrue prior to the date hereof.

4. Indemnification by Assignee. Assignee hereby agrees to indemnify, defend and hold harmless Assignor, and its shareholders, directors and officers, from and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees) arising out of or relating to the breach by Assignee of any of the

obligations, terms and/or covenants under or pursuant to the Lease, which obligations, terms and/or covenants accrue on or subsequent to the date hereof.

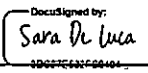
5. Miscellaneous. This Assignment shall be binding upon and enforceable against, and shall inure to the benefit of, Assignor and Assignee and their respective successors and assigns. This Assignment shall be governed by, construed under, and interpreted and enforced in accordance with, the laws of the State of California. This Assignment may be executed in several counterparts, each of which will be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment, as a sealed instrument, as of the date first above written.

ASSIGNOR:

Invita Coffee LLC,
a Delaware limited liability company

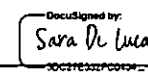


By: 
Name: Sara De Luca
Title: Manager

ASSIGNEE:

San Pasqual Realty LLC,
a California limited liability company



By: 
Name: Sara De Luca
Title: Manager