

SIXTH AMENDMENT TO LEASE NO. 915
BETWEEN THE CITY OF LOS ANGELES AND
SAN PEDRO PUBLIC MARKET, LLC
FOR THE COMMERCIAL REDEVELOPMENT OF THE PORTS O' CALL SITE
AT THE PORT OF LOS ANGELES

THIS SIXTH AMENDMENT ("Sixth Amendment") to Lease No. 915 ("Lease") is made and entered into this _____ day of _____, 2024 by and between the CITY OF LOS ANGELES, a municipal corporation, acting by order of and through its Board of Harbor Commissioners, ("Board") of the Harbor Department ("Harbor Department" or "City") and SAN PEDRO PUBLIC MARKET, LLC, a California Limited Liability Company (referred to as "Lessee").

RECITALS

WHEREAS, City and Lessee entered into the Lease on June 17, 2016 for the commercial redevelopment of the Ports O' Call Site at the Port of Los Angeles ("Port"); and

WHEREAS, effective as of November 21, 2019, the City approved a change in the control of the Lessee; and

WHEREAS, City and Lessee entered into the First Amendment on February 14, 2020, the Second Amendment on December 30, 2020, the Third Amendment on December 9, 2021, the Fourth Amendment on June 8, 2022, and the Fifth Amendment on August 24, 2022; and

NOW, THEREFORE, in consideration of the terms, covenants, and conditions hereinafter contained to be kept and performed by the respective parties hereto, IT IS MUTUALLY AGREED that the Lease be amended as follows:

Section 1. Article 1, Section 3.2 of the Lease is hereby deleted in its entirety and replaced with the following:

"3.2 Delivery Notice. Upon City's determination of delivery of a Phase and subject to Article 1, Section 3.1 above, City shall provide Lessee up to sixty (60) days written notice describing the Phase designated as SPPM-2, SPPM-3, SPPM-4, SPPM-5, SPPM-6, and SPPM-7 in Exhibit F-2, subject to Article 2, Section 6.2.4, to be delivered, the Delivery Date and other terms set forth in Article 2, Section 6.2.1 ("Delivery Notice"). Upon exercise of the Option with respect to the portion of the Premises designated in the First Delivery Notice described in Article 1, Section 2.1.3 and subject to Lessee's obligations to exercise the Option set forth in Article 1, Section 1.2.1, or upon exercise by Lessee of its rights under Section 2.4, the right to lease shall remain in full force and effect with respect to the balance of the Premises. City will provide additional Delivery Notices with respect to the Premises, which Lessee shall be obligated to accept provided that the conditions set forth in Section 2.2 (other than subpart(h)) above have been met."

Section 2. Article 2, Section 4.7.7.1 of the Lease is hereby deleted in its entirety and replaced with the following:

“4.7.7.1 Monthly Gross Receipts Statements. Lessee shall have prepared and delivered to City within thirty (30) calendar days after the end of each month, on a commercially reasonable form prepared by the Harbor Department which is attached hereto as Exhibit AB, a written statement signed by Lessee's duly authorized officer or a representative showing in reasonable detail the elements and amount of Gross Receipts received during the prior month and cumulative during the Compensation Year. Monthly payment of the Percentage Rent shall accompany the written statement detailing the Gross Receipts.”

Section 3. Article 2, Section 6.3.1 of the Lease is amended to add the following as a new Section 6.3.1.3:

“6.3.1.3 Unforeseen Conditions, Existing Contamination, and Environmentally Regulated Material During Lessee's Construction of Lessee's Improvements. Notwithstanding the “AS IS,” “WHERE IS” provisions set forth in Article 2, Section 2.2 and 2.4 of this Lease, during the course of Lessee's construction of Lessee's Improvements as set forth in Article 2, Section 6.3.1, should Lessee encounter: (i) conditions on the premises area of the Phase delivered by the City which interferes with, obstructs, or otherwise adversely affects Lessee's continued delivery of work for permitted Lessee's Improvements and exceeding \$5,000 to mitigate (“Unforeseen Conditions”), (ii) Existing Contamination; and/or (iii) Environmentally Regulated Material (collectively, with Existing Contamination, “Existing Environmental Conditions”), collectively, items (i) through (iii), are the “Reimbursable Conditions”, Lessee may submit a request to City for reimbursement of costs for and reasonably related to permitting, removal, disposal and restoration of conditions as necessary to proceed with permitted Lessee Improvements (“Reimbursable Costs”) in accordance with the following requirements, in order to qualify for reimbursement:

(a) Lessee shall have complied with and shall continue to comply with all City of Los Angeles procurement requirements applicable to Lessee when hiring contractors to address the scope of work items referenced in this Section 6.3.1.3., consisting of conducting a competitive bidding process and any other requirements established by City and all Applicable Law.

(b) For avoidance of doubt, Lessee's right to request and receive upon approval additional reimbursement for Existing Contamination described in Section 7.4 is not constrained by Section 6.3.1.3(c) or 6.3.1.3(d).

(c) In accordance with Section 6.3.1.3 herein, Lessee may request and Executive Director may approve without further action from the Board or Council reimbursement for approved costs in a total amount not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000) each calendar year for Reimbursable Costs

incurred by Lessee within that calendar year associated with the Unforeseen Conditions under this Section 6.3.1.3. In the event said not to exceed amount of Two-Hundred and Fifty Thousand Dollars (\$250,000) is not fully expended by the end of the designated calendar year, any remaining balance will not be carried over to the subsequent year and any unspent portion will be forfeited and not available for use in any subsequent year. Lessee shall have no further right to request reimbursement for Reimbursable Conditions under this Section 6.3.1.3(i) and this Section 6.3.1.3(c) and Lessee's option to request the right to receive Reimbursable Costs for Unforeseen Conditions will terminate on the earlier of the following: (1) five (5) years from delivery of the respective Parcel referenced in Exhibit F(2); (2) issuance of a temporary or permanent Certificate of Occupancy for all permanent improvements located on the respective Parcel; or (3) December 31, 2029.

(d) If the not-to-exceed dollar amount described in Section 6.3.1.3(c) is exceeded in any given calendar year and there are remaining approved Reimbursable Costs, the Harbor Department will recommend for approval to the Board additional Reimbursable Costs in accordance with Section 6.3.1.3(k) below (it being understood, however, such additional Reimbursable Costs shall require the approval of the Board acting in the Board's sole and absolute discretion).

(e) Lessee will provide notice to City within seven (7) days of the discovery of a potential Reimbursable Conditions (the "Initial Reimbursable Condition Notice") in accordance with the following:

- (i) Unforeseen Conditions. City has the right to refuse approval of any or all items if deemed to not be Unforeseen Conditions, including but not limited to if Lessee did not perform commercially reasonable site investigations or if the identified condition was reasonably avoidable. City shall approve or reject the proposed Unforeseen Conditions request within thirty (30) days of delivery of an Initial Reimbursable Condition Notice by Lessee of Unforeseen Conditions which Initial Reimbursable Condition Notice shall include items 1-3 as followings: (1) notification from Lessee's contractor to Lessee indicating discovery of Unforeseen Conditions with date of discovery; (2) defined location on a project map including size (length, width, depth, volume) and material creating Unforeseen Conditions, and (3) description of why the Unforeseen Conditions could not avoided to allow for continued delivery of permitted Lessee Improvements. In addition, a quote from Lessee contractor to Lessee to remove, dispose, and restore area of Unforeseen Conditions shall be provided within fourteen (14) days of delivery of the applicable Initial Reimbursable Condition Notice.

(ii) Existing Environmental Conditions. Lessee may upon delivery of such notice commence assessment, characterization, and removal activities, unless requested to do otherwise by the City within three (3) business days of receipt of notification. Initial Reimbursable Condition Notice of Existing Environmental Conditions shall include the following provided by Lessee: (1) Notification from Lessee's contractor to Lessee indicating discovery and (2) Defined location on a project map including size (length, width, depth, volume) and material.

(f) Lessee's permitting, removal, disposal and restoration of conditions as necessary to proceed with permitted Lessee Improvements shall be in accordance with all applicable law, and any specifications, standards, and drawings submitted by Lessee to City in connection with the Reimbursable Conditions.

(g) Lessee shall be responsible for the proper and appropriate permitting, removal, disposal and restoration of the Reimbursable Conditions. Lessee and its agents shall be responsible for obtaining all approvals through respective permitting processes from all agencies as required by Environmental Laws. The cost of adhering to this subsection are eligible as Reimbursable Conditions for Existing Environmental Conditions and approved Unforeseen Conditions. City shall, at its expense, cooperate with Lessee and any regulatory agency requiring action by the City in order to obtain such permits and approvals.

(h) Lessee shall be solely responsible for removing and disposing of any material related to Reimbursable Conditions off the Premises. City shall not be responsible for any part of the removal process, except for reimbursement and cooperation with regulatory agencies, as provided herein. In the event of any issues arising from removal and disposal, Lessee shall pursue rights and remedies against the third-parties responsible for removal and disposal at Lessee's sole expense.

(i) Reimbursement by City shall not be viewed by Lessee as a warranty or assurance by City.

(j) Nothing in this Section 6.3.1.3 shall reduce, diminish, or eliminate City's obligations and responsibilities to Lessee under Section 7 of the Lease regarding environmental liabilities generally and existing contamination specifically. Nor shall anything herein serve to obligate Lessee to act or assume additional responsibility with respect to the Existing Environmental Conditions, now known or discovered in the future.

(k) For Existing Environmental Conditions and approved Unforeseen Conditions, Lessee will submit the documentation required under this subsection

when work in complete and documentation is received, reviewed, and approved by Lessee. The City shall review and respond to Lessee’s reimbursement request within 90 days of submission. Prior to and as a condition precedent to City reimbursement of Reimbursable Costs necessary to proceed with permitted Lessee Improvements associated with the Reimbursable Conditions, Lessee shall provide to Executive Director evidence in Lessee’s possession relating thereto, including but not limited to receipts, purchase orders, purchase contracts, specifications, and any and all related documents confirming costs incurred. Lessee shall provide any further documentation reasonably available to Lessee upon the request of City. City shall not reimburse Lessee for any unverified costs in the sole and absolute discretion of Executive Director. Lessee’s reimbursement shall only be for actual costs, without markup, directly incurred and paid by Lessee.

(l) Lessee has submitted documentation required under this Section 6.3.1.3 and shall be entitled to Seven Hundred Thirty-Two Thousand Five Hundred Fifty Dollars and Eleven Cents (\$732,550.11) in reimbursement for work already completed related to Reimbursable Conditions (which reimbursement shall not account against the not-to-exceed dollar amount described in Section 6.3.1.3(c) above).”

Section 4. Article 2, Section 6.1.1.1 and 6.1.1.2 of the Lease shall be deleted in its entirety and replaced with the following:

“6.1.1. City Improvements. City shall be responsible for the construction and completion of the City Improvements set forth in Exhibit D-1 and D-2. Said improvements shall be constructed in accordance with the time line described in Exhibit G(b) and the sections herein. In addition to the City Improvements as set forth in Exhibit D-1 and D-2, City shall expand the scope of City Improvements in an amount not to exceed Two Million Three Thousand Five Hundred Fifty-Two (\$2,003,552) Dollars.

6.1.1.1 Completed City Improvements. Lessee acknowledges and agrees the following expanded City Improvements have been constructed and completed by City at City’s own cost and expense for a total amount of Five Hundred Forty-Four Thousand Ninety-Five Dollars (\$544,095):

City Improvements	Cost
Adding Vaults (4 locations with 2 vaults each) along waterside edge of promenade at designated utility sleeve locations; upsize sleeve size; and revise sleeve locations	\$ 181,891
Modify promenade light poles to provide a pathway for low voltage	\$ 68,755
Relocate HDPE Storm Drain in planter for Lessee to build Lessee wall along plinth; modify the slope of two new 18" storm drain lines; and add a new 18" storm drain line, outlet & maintenance hole	\$ 85,695
Relocate promenade backflow preventer located at the south end of the promenade. Adjust water lines, meters, and irrigation valves based on revised backflow location. Relocate electrical and communication pull boxes for LP #26 to north of light pole	\$ 3,840

Irrigation timers for Promenade Timers added because there is no permanent power for the promenade due to connection at Lessee building not present yet. Timers will help with maintenance to eliminate need for hand watering (12 locations)	\$2,040
Dust control City needs to apply dust control measures in order to closeout SWPPP. This was not originally needed because Lessee would have been in area SPPM-1 with their own SWPPP (approximately 2.3 acres)	\$4,294
Adding 2 utility sleeve locations (1 location with sleeves only and 1 location with utility access vaults along the waterside edge of the promenade)	\$166,403
Revise irrigation lines and planting to accommodate new pedestrian path access locations from Lessee building adjacent to the Promenade	\$31,177
Total	\$544,095

Lessee further acknowledges and agrees the reimbursement of One Million Four Hundred Fifty-Nine Thousand and Fifty-Seven Dollars (\$1,459,457) as set forth in Section 6.1.1.2 below satisfies in full City's obligation to expand the scope of City Improvements in an amount not to exceed Two Million Three Thousand Five Hundred Fifty-Two Dollars (\$2,003,552) as set forth in 6.1.1 above. Lessee agrees and acknowledges City shall have no further financial obligation or responsibility to expand the scope of City Improvements beyond what is set forth herein and in Exhibits D-1 and D-2.

6.1.1.2 Sewer/Electrical Infrastructure Equipment Purchase. As part of Lessee's construction obligations set forth in Article 2, Section 6.3.1.1 (a) and (d), Lessee shall be responsible for the purchase of equipment for the Sewer Lift Station and/or LADWP electrical infrastructure in accordance with the terms and conditions set forth below. Lessee acknowledges equipment for the Sewer Lift Station and the LADWP electrical infrastructure are separate and distinct and equipment for the former cannot be used for equipment for the latter. City shall reimburse Lessee up to and in no event exceed One Million Four Hundred Fifty-Nine Thousand Four Hundred Fifty-Seven Dollars (\$1,459,457) for Lessee's purchase of a portion of the necessary equipment for the Sewer Lift Station and/or LADWP electrical infrastructure ("Sewer/Electrical Infrastructure Equipment"). Lessee shall be solely responsible for the purchase costs of Sewer/Electrical Infrastructure Equipment exceeding One Million Four Hundred Fifty-Nine Thousand Four Hundred Fifty-Seven Dollars (\$1,459,457) and City shall have no further obligation to reimburse or pay to Lessee costs after said aforementioned reimbursement is full expended. Sewer/Electrical Infrastructure Equipment may include but is not limited to the components listed in Exhibit AA, which is attached hereto and incorporated by reference.

(a) Lessee shall comply with all City of Los Angeles procurement requirements when purchasing Sewer/Electrical Infrastructure Equipment, including but not limited to a conducting a

competitive bidding process and any other requirements established by City.

(b) Sewer/Electrical Infrastructure Equipment and the Sewer Lift Station shall become a fixture to the Premises and will remain with the land throughout the functional life span of said equipment. Lessee shall under no condition be allowed to remove Sewer/Electrical Infrastructure Equipment or the Sewer Lift Station at any time unless the equipment is no longer functional for the intended purpose and as approved by City.

(c) Prior to and as a condition precedent to City reimbursement of purchase costs for Sewer/Electrical Infrastructure Equipment, Lessee shall provide to Executive Director including but not limited to receipts, purchase orders, purchase contracts, specifications, and any and all related documents confirming costs for the purchase of the equipment. Further, Lessee shall install Sewer/Electrical Infrastructure Equipment and receive necessary inspections and confirmations of the equipment prior to reimbursement of purchase costs. Lessee shall provide any further documentation upon the request of City. City shall not reimburse Lessee for any unverified costs in the sole and absolute discretion of Executive Director. Reimbursement to Lessee shall require prior approval of the Board.

(d) Lessee's purchase of Sewer/Electrical Infrastructure Equipment shall be in accordance with LADPW and LADWP specifications, standards, and drawings (the "Sewer/Electrical Plans and Specifications").

(e) As set forth in Article 2, Section 6.3.1.1, Lessee shall be responsible for the proper and appropriate installation and operation of all equipment including but not limited to the Sewer/Electrical Infrastructure Equipment. Lessee shall be responsible for obtaining all equipment approvals through respective permitting processes from all agencies including but not limited to LADPW, LADWP, and City Department of Building & Safety.

(f) Lessee covenants and agrees Sewer/Electrical Infrastructure Equipment is new, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. Lessee shall be solely responsible for procuring, installing, and testing the Sewer/Electrical Infrastructure Equipment according to the approved Sewer/Electrical Plans and Specifications. City shall not be responsible for any break, disruption, malfunction, defect, or failure of Sewer/Electrical

Infrastructure Equipment. In the event of equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, Lessee shall pursue rights and remedies against manufacturer and supplier of the equipment under the relevant warranties provided by the manufacturer and supplier at Lessee's sole expense. Lessee shall further work directly with LADPW and LADWP in the event Sewer/Electrical Infrastructure Equipment does not meet standards, function properly after installation, and/or needs repair.

(g) Reimbursement by City shall not be viewed by Lessee as a warranty or assurance as to the fitness of Sewer/Electrical Infrastructure Equipment. It is Lessee's responsibility to determine the fitness and condition of the equipment in conjunction with LADPW and LADWP specifications and inspections."

Section 5. Attached to this Sixth Amendment as Exhibit B is the form of Non-Disturbance and Attornment Agreement that shall be deemed to be the form used in Exhibit Q of the Lease. The execution and delivery by the City, of any Non-Disturbance and Attornment Agreement, with no material alterations may be approved by the Executive Director, and shall not require approval by the Board or Council, unless any such form of Non-Disturbance and Attornment Agreement is materially altered from the form attached to this Sixth Amendment as Exhibit B.

Section 6. Except as specifically provided herein, this Sixth Amendment shall not in any manner alter, change, modify, or affect any of the rights, privileges, duties, or obligations of either of the parties hereto under or by any reason of said Lease, and except as expressly exercised herein, all of the terms, covenants, and conditions of said Lease, as exercised, shall remain in full force and effect.

[signature page follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Sixth Amendment on the date of the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners


Dated: _____, 20__

By _____
Executive Director

Attest: _____
Board Secretary

SAN PEDRO PUBLIC MARKET, LLC
a California limited liability company


Dated: 9/5, 2024

By: 
ERIC JOHNSON, VP
(Print/type Name and Title)

By: Michelle Valencia
Michelle Valencia, Project Manager
(Print/type Name and Title)

APPROVED AS TO FORM AND LEGALITY

September 9, 2024
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By 
HELEN J. SOK, Deputy City Attorney