

CITY OF LOS ANGELES HARBOR DEPARTMENT
Port of Los Angeles

ACCESS AGREEMENT No. _____

The Executive Director of the Harbor Department ("Executive Director") of the City of Los Angeles ("City"), subject to the following terms and conditions, hereby grants permission to San Pedro Public Market, LLC, a California limited liability company ("Developer") to occupy and use certain lands and/or waters and/or facilities within the Harbor District owned or under the control of City, acting through its Board of Harbor Commissioners ("Board").

1. Premises. Developer is permitted under this Access Agreement ("ACCESS AGREEMENT") to use the areas described in Permit No. 915 between City and Developer ("Permit") which is hereby incorporated by reference and as delineated and more particularly described on Exhibit A ("Premises").

2. Permitted Use. The Premises shall be used to allow the Developer and Developer's Consultants (defined below) access to accomplish certain necessary site investigation and preparation work as set forth in Developer's Application for Port Permit ("APP") and Harbor Engineer's General Permit ("HEP") described in Article 2, Section 6.3.2.2.1 of the Permit, both the APP and HEP Nos. _____ and _____ are hereby incorporated by reference ("Permitted Use"); provided, however, that the rights hereby granted to use the Premises for said purposes shall not be exclusive, and whenever the Premises, or any part thereof, are not required in whole or in part for the use of Developer for the stated purposes, the Executive Director shall have the right to and may make other assignments to any other person or entity to use such Premises, or any part thereof. In the event a HEP is not required for the Developer's site investigation and preparation work, the Developer shall use the Premises in accordance with the terms and conditions set forth in this ACCESS AGREEMENT. Developer shall not use the Premises in any manner, even if the use is a Permitted Use, that will cause cancellation of any insurance policy covering the Premises or adjacent premises; provided, however, Developer may, in City's sole discretion, remain if it pays the increase in City's insurance costs caused by its operations. No offensive or refuse matter, or any substance constituting any unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health, shall ever be permitted by Developer to be or remain on the Premises, and Developer shall prevent any such material or matter from being or accumulating upon the Premises. Developer further agrees not to keep on the Premises, or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the Premises or any structure erected thereon.

2.1 Developer's Consultants. City and Developer acknowledge Developer's Permitted Uses may include use of third-parties, with whom Developer has contracted working for or at the direction of the Developer ("Developer's Consultants"). For purposes of the Permitted Uses, Developer's Consultants shall be deemed to be its agents. Developer shall require all of Developer's Consultants, including but not limited to designers, architects, contractors, and any and all associated companies, to comply with the terms and conditions of this ACCESS AGREEMENT. Developer agrees that this ACCESS AGREEMENT creates no rights in Developer's Consultants with respect to City and that obligations owed to Developer's Consultants, including but not limited to, the obligation to pay for services performed are those of Developer alone.

3. Effective and Termination Dates. This ACCESS AGREEMENT shall commence and become effective on the date of its execution by Executive Director ("Effective Date") and shall terminate twelve (12) months from the Effective Date ("Termination Date"). Termination Date shall also mean the date of termination by revocation as set forth in Section 4, by termination as set forth in Section 18, by operation of law, or by any other reason.

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4. Assignment Revocable. This ACCESS AGREEMENT shall be revocable at any time prior to the Termination Date by Executive Director, at his or her sole option, upon the giving of five (5) days' written notice to Developer stating the date and time upon which this ACCESS AGREEMENT shall terminate. Developer understands and agrees that Developer has the interest only of a licensee and has no other interest in the Premises. Developer understands and agrees that the City reserves the unqualified and unconditional right at any time without any more notice to Developer than set forth in this Section 4 to withdraw the Premises from Developer's use provided the City refunds to Developer any compensation previously collected for the number of days Developer has actually been prevented from using the Premises. Developer understands and agrees that, notwithstanding any expenditures it may have made in preparation for its use of the Premises, such withdrawal from use by City does not entitle Developer or any other person to any damages. Neither City, nor any Board member, officer, or employee thereof, shall be liable in any manner to Developer because of such revocation.

5. Compensation. For using the Premises pursuant to this ACCESS AGREEMENT:

(a) At least thirty (30) days prior to the Effective Date, Developer shall pay to the City's Harbor Department Zero Dollars (\$0) as compensation for the use of the Premises plus Zero Dollars (\$0) as a refundable restoration and breakage deposit. Any deposit required under this Section 5(a) shall be in addition to any deposit required for the issuance of a Harbor Engineer Permit pursuant to Section 7 of this ACCESS AGREEMENT.

(b) Compensation set forth in Section 5(a) is strictly for use of the Premises. Developer may incur additional charges if City provides utilities, equipment, or labor, including but not limited to security provided by the Los Angeles Port Police, where necessary to support the Permitted Use. Use of the Premises for purposes not expressly permitted under the provisions of this ACCESS AGREEMENT, whether approved in writing by Executive Director or not, may also result in additional charges, including charges required under the Port of Los Angeles Tariff No. 4, as it may be amended or superseded ("Tariff"). Developer agrees to pay such additional charges.

(c) Notwithstanding any other provision of this ACCESS AGREEMENT, Developer's obligation to pay all compensation to City shall be absolute and unconditional and shall not be affected by any circumstance including, without limitation, any set-off, counterclaim, recoupment, defense, or other right or claim which Developer may have against City.

6. Premises Satisfactory to Developer / Required Modifications. Developer has inspected the Premises and agrees that they are suitable for the Permitted Use. No officer or employee of City has made any representation or warranty with respect to the Premises, except as described in writing and attached hereto as an addendum, if any, and in entering into this ACCESS AGREEMENT, Developer agrees it relies only on the provisions of the ACCESS AGREEMENT. Any modification, improvement, or addition to the Premises and any equipment installation or removal required by the Fire Department, Department of Building and Safety, South Coast Air Quality Management District, Regional Water Quality Control Board, U.S. Coast Guard, Environmental Protection Agency, or any other agency in connection with Developer's operations, shall be constructed, installed, or removed at Developer's sole expense. Developer shall obtain a Harbor Engineer Permit from the office of the Chief Harbor Engineer, Engineering Division, of City's Harbor Department ("Chief Harbor Engineer") and shall comply with the requirements of Section 7 of this ACCESS AGREEMENT before making any modification, improvement, or addition to the Premises.

7. Alterations on Premises. Developer shall not construct on or alter ("Alteration") the Premises, including a change in the grade, without first obtaining City's written approval and a Harbor Engineer Permit. Developer shall submit to City a complete Application for Port Permit that attaches a complete set of drawings, plans, and specifications reflecting the proposed Alteration. Where applicable, the drawings, plans, and specifications must be prepared and stamped by a licensed engineer registered in the State of California. All projects in the Harbor District are subject to review by City's Harbor

Department pursuant to the California Environmental Quality Act (CEQA) and the certified Port Master Plan. City's Chief Harbor Engineer shall have the right to reject or order reasonable changes in said drawings, plans, and specifications. Developer, at its own expense, shall obtain all permits necessary for such Alteration, including a Harbor Engineer Permit, prior to the commencement of such Alteration. All Alterations by Developer pursuant to this ACCESS AGREEMENT shall be at Developer's sole expense. Developer shall keep the Premises free and clear of liens for labor and materials and shall hold City harmless from any responsibility in respect thereto. Developer shall give written notice to the Chief Harbor Engineer, in advance, of the date it will commence any Alteration. Immediately upon the completion of the Alteration, Developer shall notify the Chief Harbor Engineer of the date of such completion and shall, within thirty (30) days after such completion, file with the Chief Harbor Engineer, in a form acceptable to the Chief Harbor Engineer, a set of "as built" plans for such Alteration if required under the terms of the Harbor Engineer Permit issued for the Alteration.

8. Signs and Lighting. Developer shall not erect or display, or permit to be erected or displayed, on the Premises any signs or advertising matter of any kind without first obtaining the written consent of Executive Director. If Developer obtains consent, Developer shall also comply with the requirements of Section 7 of this ACCESS AGREEMENT prior to erecting or displaying any signs or advertising matter on the Premises. Developer shall further post, erect, and maintain on the Premises such signs as Executive Director may direct. All signs erected or displayed on the Premises shall comply with the regulations set forth in Section 14.4.1 *et seq.* of the Los Angeles Municipal Code. Developer acknowledges that the Premises may lack adequate lighting for a Permitted Use and that Developer is responsible for installing temporary or permanent lighting as it may deem necessary to perform any labor, or to protect any property stored or located on the Premises, or to otherwise use the Premises for any Permitted Use. Developer shall comply with the requirements of Section 7 of this ACCESS AGREEMENT prior to installing any lighting. Any lighting installed shall meet Illuminating Engineering Society / American National Standards Institute (IES/ANSI) standards.

9. Immediate Access to Repair / Maintain Premises. Developer is aware that City's Department of Water & Power, other utility, or other maintenance or service from or on behalf of City, may need to service or repair certain facilities on the Premises. If such repair is necessary, Developer agrees to relocate, at its expense, all of its equipment and other personal property to provide such personnel adequate access. Developer agrees to complete such relocation within twenty-four (24) hours of receiving notice from City except in case of emergency. Developer agrees neither the department servicing the Premises nor City shall be responsible for any loss Developer may suffer as a result of such maintenance or repair.

10. Premises Subject to Tariff. Developer accepts the Premises and shall undertake the Permitted Use set forth in Section 2 of this ACCESS AGREEMENT subject to each and every term and condition provided herein, and to each and every rate, term, and condition of the Tariff, as applicable to Premises and/or the Permitted Use. Developer represents and warrants that it has received, read, and understands the rates, terms, and conditions of the Tariff. A copy of the Tariff may be obtained by going on the Harbor Department website. Except as otherwise set forth in this ACCESS AGREEMENT, Developer is contractually bound by all Tariff rates, terms and conditions as if the same were set forth in full herein. Notwithstanding the foregoing, if a conflict exists at any time between a provision of this ACCESS AGREEMENT and a Tariff provision this ACCESS AGREEMENT shall at all times prevail. The Rent payable by Developer hereunder shall supplant and be in lieu of any and all monetary consideration, including current and future charges or fees which are due City under the Tariff. Otherwise, pursuant to this Section, all terms and conditions of the Tariff shall at all times apply to this ACCESS AGREEMENT, Developer's use and occupancy of the Premises and Developer's undertaking of the Permitted Uses. In the event the Tariff is modified, either City or Developer may request a meeting to discuss such Tariff item. In the event City and Developer come to a mutual agreement, both parties acknowledge such mutual agreement may require amendment to this ACCESS AGREEMENT subject to the approval of the Board in their sole discretion.

11. Compliance with Applicable Laws and Environmental Obligations.

(a) At all times in its use and occupancy of the Premises and its conduct of operations thereon, Developer, at Developer's sole cost and expense, shall comply with all applicable federal, state, county, City, or government agency laws, statutes, ordinances, standards, codes (including all building codes), rules, regulations, requirements, or orders in effect now or hereafter in effect ("Applicable Laws") pertaining to the use or condition of the Premises and/or Developer's operations and conduct of its business. Applicable Laws shall include, but not be limited to, all environmental laws and regulations in effect now or hereafter in effect including:

(i) The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 USCS §§ 9601 *et seq.*) in its present or successor form and its implementing regulations;

(ii) The Resource Conservation and Recovery Act and Hazardous and Solid Waste Amendments of 1984 ("RCRA") (42 USCS §§ 6901 *et seq.*) in its present or successor form and its implementing regulations;

(iii) The federal Clean Water Act (33 USCS §§ 1251 *et seq.*) in its present or successor form and its implementing regulations;

(iv) The California Porter-Cologne Water Quality Control Act (California Water Code §§ 13020 *et seq.*) in its present or successor form and its implementing regulations;

(v) The federal Clean Air Act (42 USCS §§ 7401 *et seq.*) in its present or successor form and its implementing regulations;

(vi) The California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988) in its present or successor form and its implementing regulations;

(vii) The California Lewis-Presley Air Quality Management Act of 1976 (California Health and Safety Code §§ 40400 *et seq.*) in its present or successor form and its implementing regulations; and

(viii) Any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standard of conduct) now or hereinafter in effect which concerns Environmentally Regulated Material (as defined in Section 11(c)), the Premises, and/or Developer's use and/or occupancy thereof.

(b) It is the parties' intent that Developer will make, at Developer's sole cost and expense, any and all alterations, improvements, and changes, whether structural or nonstructural, that are required under this ACCESS AGREEMENT. In addition, Developer shall comply immediately with all applicable environmental policies, rules, and directives of City's Harbor Department, known as the Port Environmental Policies. This ACCESS AGREEMENT shall be construed in accordance with California law.

(c) Developer shall not cause or permit any Environmentally Regulated Material, as defined in this Section 11(c), to be generated, brought onto, handled, used, stored, transported from, received, or disposed of (hereinafter sometimes collectively referred to as "handle" or "handled") in or about the Premises in compliance with Applicable Laws and except as permitted, required, or necessary under Section 2 of this ACCESS AGREEMENT, if any. Developer shall

handle all such Environmentally Regulated Material in strict compliance with Applicable Laws in effect during Developer's occupancy. The term "Environmentally Regulated Material" shall mean:

- (i) Any "hazardous substance" as that term is defined in the CERCLA;
- (ii) "Hazardous waste" as that term is defined in the RCRA;
- (iii) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standard of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereinafter in effect);
- (iv) Radioactive material, including any source, special nuclear, or byproduct material as defined in the Atomic Energy Act of 1954 (42 USCS §§ 2011 *et seq.*) in its present or successor form;
- (v) Asbestos in any form or condition;
- (vi) Polychlorinated biphenyls ("PCBs") and any substance or compound containing PCBs; and
- (vii) Petroleum products.

(d) Developer shall remediate or cause the remediation of any spill, discharge, or release of any Environmental Regulated Material that occurs in, on, under, or about the Premises ("Contamination"), whether caused by Developer or any third-party under the direction or control of Developer during Developer's occupancy, including Contamination of improvements, adjacent harbor waters, soil, sediment, groundwater, or air, or of adjacent premises (including soil, sediment, groundwater, or air) and including Contamination that is considered a nuisance under Applicable Laws. Remediation shall be to the satisfaction of City, and the requirements of the applicable governmental agencies including the Regional Water Quality Control Board, by removing or effecting the removal of all Contamination including but not limited to contaminated soil, water, groundwater, sediment, or other material it may place or cause to be placed on site such that no encumbrances, such as deed or land use restrictions, be imposed on the Premises as a result of such Contamination. In fulfilling the obligations under this Section 11, Developer shall also comply with any other conditions reasonably imposed by City. If Developer knows or has reasonable cause to believe that Contamination has occurred in, on, under, or about the Premises caused by Developer's Consultants, Developer shall immediately give written notice to City.

(e) Developer bears sole responsibility for full compliance with any and all Applicable Laws regarding the use, storage, handling, distribution, processing, and/or disposal of Environmentally Regulated Material brought on the Premises by Developer or Developer's Consultants including Contamination, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the Premises, on the owner of any improvements on the Premises, on the user of the Premises, or on the user of any improvements on the Premises. For purposes of CERCLA, and any and all other Applicable Laws, Developer shall be considered the owner and operator. Developer agrees that any claims, damages, fines, or other penalties asserted against or levied on City and/or Developer as a result of its noncompliance with any Applicable Laws shall be the sole responsibility of Developer and that Developer shall indemnify and hold City harmless from any and all such claims, damages, fines, penalties, and/or judgments, as well as any costs expended to defend against such claims, damages, fines, and penalties and/or judgments, including attorneys' and experts' fees. City, at its sole option, may pay such claims,

damages, fines, penalties, and/or judgments resulting from Developer's noncompliance with any of the aforementioned authorities, and Developer shall indemnify and reimburse City for any such payments.

(f) In discharging Developer's obligations under this ACCESS AGREEMENT, if Developer disposes of any Contamination, within thirty (30) days of Developer's receipt of original documents, Developer shall provide City copies of all records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site, and the location of the disposal site. Neither City, Port of Los Angeles, nor Los Angeles Harbor Department shall appear on any manifest document as a generator of such material unless it is a contamination already existing on the Premises.

(g) In discharging Developer's obligations under this ACCESS AGREEMENT, Developer shall perform any tests using a State of California Department of Health Services certified testing laboratory or other similar laboratory upon City's written approval. By signing this ACCESS AGREEMENT, Developer hereby irrevocably directs any such laboratory to provide City, upon written request from City, copies of all of its reports, tests results, and data gathered. As used in this Section 11, "Developer" includes agents, employees, contractors, subcontractors, and/or invitees of Developer.

(h) Developer shall implement City's Harbor Department's policies, known as Best Management Practices, in order to reduce the potential for pollutants to enter Harbor waters, as follows:

(i) Facility Operations: Use dry cleaning methods whenever possible; avoid washing areas down. Do not allow sweepings or sediment to enter the storm drain or the Harbor. Collect wash water for disposal or direct to a clarifier. Do not encourage scavengers. Do not feed birds, feral cats, sea lions, or other scavengers. Recycle whenever possible.

(ii) Maintenance Operations: Use drip pans to prevent any drips or leaks from contacting the ground during maintenance and fueling operations. Clean spills or drips immediately using dry methods. Use spill cleanup kits to confine or contain spills. Do not hose down equipment or allow process water to enter the storm drain or the Harbor. Place tarps beneath maintenance and repair operations to prevent materials such as paint chips and metals from contacting the ground.

(iii) Material and Waste Handling and Storage: Train employees responsible for waste management on handling and disposal procedures. Store all hazardous and universal waste in accordance with all federal, state, and local regulations. Store all materials and waste inside and in secondary containment. If stored outside, store only in designated, covered, and contained areas. Store waste in covered, leak proof, labeled containers. Keep lids closed on all outdoor containers including dumpsters. Store all oily products (e.g. engines), batteries, tires, and metal off the ground and under cover when stored outdoors.

(i) Except as may be otherwise provided in this ACCESS AGREEMENT, Developer's obligations in this Section 11 shall survive the Termination Date of this ACCESS AGREEMENT.

12. Restoration and Surrender of Premises. Upon the termination of this ACCESS AGREEMENT, Developer shall quit and surrender occupancy and use of the Premises to City and shall,

without cost to City, remove any and all its property and restore the Premises to the same or as good condition as the same were in at the time of the first occupancy thereof by Developer. Developer may incur additional charges and/or forfeit any deposit if Developer fails to fully restore the Premises to the satisfaction of the Executive Director prior to the termination of this ACCESS AGREEMENT.

13. Indemnity.

13.1 Indemnity for Onsite Premises.

(a) During the Term of this ACCESS AGREEMENT, except as may arise from the acts or omissions arising from the negligence or willful misconduct of City or City's Parties, Developer shall at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), for death of or injury to persons, or damage to property occurring on the Premises, including property owned by or under the care and custody of City, and for civil fines and penalties that may arise from or be caused directly or indirectly by:

(i) Any dangerous, hazardous, unsafe or defective condition of, in or on the Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by Developer, its officers, agents, employees, sublessees, licensees or invitees;

(ii) Any operation conducted upon or any use or occupation of the Premises by Developer, its officers, agents, employees, sublessees, licensees or invitees under or pursuant to the provisions of this ACCESS AGREEMENT or otherwise;

(iii) Any act, error, omission, willful misconduct or negligence related to the use or operation of the Premises of Developer, its officers, agents, employees, sublessees, licensees or invitees;

(iv) Any failure of Developer, its officers, agents or employees to comply with any of the terms or conditions of this ACCESS AGREEMENT or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation; or

(b) This Section 13.1 shall not be limited to the amount of insurance coverage available to Developer under the insurance policies required to be in effect under this ACCESS AGREEMENT and shall be applicable at all times.

13.2 Indemnity for Offsite Premises-Harbor District.

(a) During the term of this ACCESS AGREEMENT, except as may arise from the sole or gross negligence or willful misconduct of City or City's Parties, Developer shall at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), for death of or injury to persons, or damage to property, including property owned by or under the care and custody of City,

and for civil fines and penalties that may arise from or be caused directly or indirectly by the conditions, operations, use, acts, omissions or negligence referred to in subsections (i) through (iv) set forth in Section 13.1(a) above, within the "Harbor District," as defined in the Charter but outside of the Premises and in accordance with the terms and conditions further stated in this Section 13.2.1.

(b) Developer's liability under this Section 13.2.1(a) shall be limited to the coverage under the insurance policies required to be in effect under this ACCESS AGREEMENT set forth in Exhibit B, even if such insurance is not in effect or in place as stated herein at the time.

13.3 Survival of Obligations. The indemnity obligations in this Section 13.1 shall survive the expiration or earlier termination of this ACCESS AGREEMENT.

14. Insurance. In addition to, and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 13 of this ACCESS AGREEMENT, Developer shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this ACCESS AGREEMENT the following insurance which is also further set forth in Exhibit B:

(a) Commercial general liability insurance or marine general liability, including contractual liability, and property damage insurance written by an insurance company authorized to do business in the State of California, or approved by the California Department of Insurance as a surplus lines insurer eligible to do business in California, rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if a Best's Rating is not available) with Developer's normal limits of liability, but not less than Five Million Dollars (\$5,000,000) for injury or death to one or more persons out of each accident or occurrence and Five Million Dollars (\$5,000,000) for bodily injury and property damage for each occurrence / Five Million Dollars (\$5,000,000) general aggregate.

(b) Where Developer utilizes any vehicles, Developer shall also procure and maintain at its expense and keep in force at all times during the term of this ACCESS AGREEMENT automobile insurance with limits of liability not less than Five Million Dollars (\$5,000,000) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. This insurance shall cover all owned, non-owned, and/or hired automobile.

(c) Limits for coverage required under Section 14(a) and (b) of this ACCESS AGREEMENT shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Developer. The retention or self-insurance provided shall provide that any other insurance maintained by City's Harbor Department shall be excess of Developer's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, Developer shall have all the obligations of an "insurer" under the California Insurance Code and said insurance shall be deemed to include a defense of suits provision and a severability of interest clause.

(d) If Developer maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

(e) Policies submitted pursuant to Section 14(a) and (b) of this ACCESS AGREEMENT shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

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(i) "Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles acting by and through its Harbor Department, the Board of Harbor Commissioners, and their officers, agents, and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts, and activities of all the additional insureds, including any sole negligence of the insureds, under Access Agreement No. _____, and under any amendments, modifications, extensions, or renewals of said permit regardless of whether such operations, uses, occupations, acts, and activities occur on the Premises or elsewhere."

(ii) "The policy to which this endorsement is attached shall provide a 10-days' notice of cancellation for nonpayment of premium, and a 30-days' notice of cancellation for any other reasons to the City's Risk Manager."

(iii) "The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by the City is excess coverage."

(iv) "In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability."

(v) "Notice of occurrences or claims under the policy shall be made to the City's Risk Manager with copies to the Los Angeles City Attorney's Office."

(f) Developer shall secure the payment of compensation to any employees injured while performing work or labor necessary for and incidental to performance under this ACCESS AGREEMENT in accordance with Section 3700 of the California Labor Code. Developer shall file with City one of the following:

(i) A certificate of consent to self-insure issued by the Director of Industrial Relations, State of California;

(ii) A certificate of Workers' Compensation insurance issued by an admitted carrier; or

(iii) An exact copy or duplicate thereof of the policy certified by the Director or the insurer.

Such documents shall be filed prior to Developer's occupancy of the Premises. Where Developer has employees who are covered by the United States Longshore and Harbor Workers' Compensation Act ("USL&H Act"), Developer shall furnish proof of such coverage to City. It is suggested that Developer consult with its insurance professional of its choosing to determine whether its proposed operation methods will render its employees subject to coverage under the USL&H Act. All Workers' Compensation insurance submitted to City shall include an endorsement providing that any carrier paying benefits agrees to waive any right of subrogation it may have against City.

(g) All insurance procured by Developer shall comply with the following:

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(i) Each insurance policy described above shall provide that it will not be cancelled or reduced in coverage until after City's Risk Manager has been given a 10-day notice of cancellation for nonpayment of premium, and a 30-day notice of cancellation for any other reason.

(ii) Electronic submission is the required method of submitting Developer's insurance documents. Track4LA® is City's online insurance compliance system which is designed to be used by insurance brokers and agents to submit client insurance certificates directly to City. Developer's insurance broker or agent shall obtain access to Track4LA® at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on Developer's behalf.

(iii) Prior to the expiration of each policy, Developer shall show through submitting to Track4LA® that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to Track4LA®. If Developer neglects or fails to secure or maintain the required insurance, or if Developer fails to submit proof of insurance as required above, City's Harbor Department may, at its option and at the expense of Developer, obtain such insurance for Developer.

(iv) Executive Director, at his or her discretion, based upon recommendation of the Risk Manager of City's Harbor Department, may request that Developer increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving written notice to Developer.

(v) Developer shall report in writing to Executive Director within fifteen (15) days after it, its officers, or its managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property, occurring upon the Premises, or elsewhere within the Harbor District, if Developer's officers, agents, or employees are involved in such an accident or occurrence while undertaking the Permitted Use. Such report shall contain to the extent available: (1) the name and address of the persons involved; (2) a general statement as to the nature and extent of injury or damage; (3) the date and hour of occurrence; (4) the names and addresses of known witnesses; and (5) such other information as may be known to Developer, its officers, or its managing agents.

(vi) Upon request by City, Developer must furnish full certified copies of any or all policies of insurance required herein. Developer's obligation to provide such copies shall survive the Termination Date regardless of whether City's request is made prior to or after the Termination Date.

15. No Assignments/Sublicenses/Transfers. No transfer of this ACCESS AGREEMENT, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by or of Developer (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Developer), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublicense, transfer, gift, hypothecation, or grant of total or partial control, or any encumbrance of this ACCESS AGREEMENT (hereafter collectively referred to as "Transfer"), shall be valid or effective for any purpose. "Transfer" also shall include the involvement of Developer or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout, or otherwise) whether or not a formal assignment or hypothecation of this ACCESS AGREEMENT or Developer's assets, which involvement results in a reduction of the net worth of Developer (defined as the

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net worth of Developer, excluding guarantors, established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth as it was represented at the time of the execution of this ACCESS AGREEMENT or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. For purposes of this Section 15, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Developer's assets in the hands of a receiver or trustee; or (2) a transfer by Developer for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is an Developer or of a general partner of an Developer. Notwithstanding the provisions of this Section 15, Developer may enter into sublicenses with vendors, performers, or other individuals or entities participating in an event authorized under this ACCESS AGREEMENT provided that Developer remains primarily responsible for the event and all obligations under this ACCESS AGREEMENT.

16. Developer Name Change. Developer shall notify City in writing within ten (10) days of making any changes to its name as set forth in the preamble of this ACCESS AGREEMENT and shall provide City with all documents in connection with the change.

17. Transfer of Stock. If Developer is a corporation and more than ten percent (10%) of the outstanding shares of capital stock of Developer is traded during any calendar year after filing its application for this ACCESS AGREEMENT, Developer shall notify Executive Director in writing within ten (10) days after the transfer date; provided, however, that this provision shall have no application in the event the stock of Developer is listed on either the New York Stock Exchange, NASDAQ, or the NYSE Arca Options. If more than twenty-five percent (25%) of the Developer's stock is transferred, whether by one or by means of successive transfers, regardless of whether Developer is a publicly or privately held entity, such transfer shall be deemed an assignment within the meaning of Section 15. Any such transfer shall void this ACCESS AGREEMENT.

18. Conflict of Interest. It is understood and agreed that the parties to this ACCESS AGREEMENT have read and are aware of the provisions of Section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of City's Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this ACCESS AGREEMENT. Notwithstanding any other provision of this ACCESS AGREEMENT, it is further understood and agreed that if such a financial interest does exist at the inception of this ACCESS AGREEMENT, City may immediately terminate this ACCESS AGREEMENT by giving written notice thereof.

19. Notice. In all cases where written notice, including the service of legal pleadings, is to be given under this ACCESS AGREEMENT, service shall be deemed sufficient if said notice is deposited in the United States mail, in a sealed envelope, addressed as set forth below, with postage thereon fully prepaid. When so given, such notice shall be effective from the date of mailing. Unless changed by notice in writing from the respective parties, notice to the parties shall be as follows:

To City: Los Angeles Harbor Department
P.O. Box 151
San Pedro, California 90733-0151
Attention: Executive Director
Attention: Director of Real Estate

With a copy to: Office of City Attorney—Harbor Department
425 S. Palos Verdes Street
San Pedro, California 90731
Attention: General Counsel

To Developer: San Pedro Public Market LLC
c/o The Ratkovich Company
700 South Flower Street, Suite 2600
Los Angeles, CA 90017
Attn: Brian Saenger

with copies to:

Jerico Development Corporation
461 W. Sixth Street, Suite 300
San Pedro, CA 90731

and to:

The Ratkovich Company
700 South Flower Street, Suite 2600
Los Angeles, CA 90017
Attn: Brian Saenger

and to:

DLA Piper LLP (US)
550 South Hope Street, Suite 2300
Los Angeles, CA 90071
Attn: Marshall M. Taylor, Esq.

Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law. All notice periods under this ACCESS AGREEMENT refer to calendar days unless otherwise specifically stated.

20. Construction of Agreement. This ACCESS AGREEMENT shall not be construed against the party preparing it and shall be construed without regard to the identity of the person who drafted this ACCESS AGREEMENT.

21. No Waiver. No waiver by either party at any time of any terms or conditions of this ACCESS AGREEMENT shall be a waiver at any subsequent time of the same or any other term or condition. The acceptance of compensation by City shall not be deemed a waiver of any other breach by Developer of any term or condition of this ACCESS AGREEMENT other than the failure of Developer to timely make any particular compensation payment so accepted. No breach of a covenant, term, or condition of this ACCESS AGREEMENT will be deemed to have been waived by City unless the waiver is in writing and executed by City.

ACCESS AGREEMENT No. _____
(General Purposes)

22. Joint and Several Obligations of Developer. If more than one individual or entity comprises Developer, the obligations imposed on each individual or entity that comprises Developer under this ACCESS AGREEMENT shall be joint and several.

23. Time of the Essence. Time is of the essence in this ACCESS AGREEMENT.

24. Nondiscrimination and Affirmative Action Provisions. Developer agrees not to discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition. All subcontracts awarded under or pursuant to this ACCESS AGREEMENT shall contain this provision.

25. Minority, Women and Other Business Enterprise (MBE/WBE/OBE) Outreach Program. It is the policy of City to provide minority business enterprises ("MBEs"), women's business enterprises ("WBEs"), and all other business enterprises ("OBEs") an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Developer shall assist City in implementing this policy and shall use its best efforts to afford the opportunity for MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including MBEs, WBEs, and OBEs, have an equal opportunity to compete for and participate in any such participation opportunity which might be presented under this ACCESS AGREEMENT.

26. Service Contractor Worker Retention Policy and Living Wage Policy Requirements. Board adopted Resolution No. 5771 on January 3, 1999, to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention, set forth at Section 10.36 *et seq.* of the Los Angeles Administrative Code, as the policy of City's Harbor Department. Further, Charter Section 378 requires compliance with City's Living Wage requirements, set forth at Section 10.37 *et seq.* of the Los Angeles Administrative Code. Developer shall comply with these policies wherever applicable. Violation of this provision, where applicable, shall entitle City to terminate this ACCESS AGREEMENT and otherwise pursue legal remedies that may be available.

27. Wage and Earnings Assignment Orders/Notices of Assignments. Developer is obligated to fully comply with all applicable state and federal employment reporting requirements for Developer and/or its employees. Developer shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. Developer will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Section 5230 *et seq.* of the California Family Code. Developer will maintain such compliance throughout the term of this ACCESS AGREEMENT.

28. Equal Benefits Policy. Board adopted Resolution No. 6328 on January 12, 2005, to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, set forth at Section 10.8.2.1 *et seq.* of the Los Angeles Administrative Code, as a policy of City's Harbor Department. Developer shall comply with the policy wherever applicable. Violation of the policy shall entitle City to terminate this ACCESS AGREEMENT and otherwise pursue legal remedies that may be available.

29. Business Tax Registration Certification. Developer represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by City's Business Tax Ordinance set forth at Sections 21.00 *et seq.* of the Los Angeles Municipal Code. Developer shall provide City evidence that all such Certificates have been obtained. Developer shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended.

ACCESS AGREEMENT No. _____
(General Purposes)

30. Wilmington Truck Route. It is recognized by both parties that Developer may not directly control any trucks serving the Premises. However, Developer will make its best effort to notify truck drivers, truck brokers, and trucking companies that trucks serving the Premises must confine their route to the designated Wilmington Truck Route of Alameda Street and Harry Bridges Boulevard; Figueroa Street from Harry Bridges Boulevard to "C" Street; and Anaheim Street east of Alameda Street.

31. State Tidelands Act. This ACCESS AGREEMENT, the Premises, and Developer's use and occupancy thereof shall at all times be subject to the limitations, conditions, restrictions, and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (1929 Cal. Stats., Ch. 651), as amended, and Article VI of the Charter of City of Los Angeles relating to such lands. Developer shall not undertake any use of the Premises, even a Permitted Use, which is or will be inconsistent with such limitations, conditions, restrictions, and reservations.

32. Section Headings. Section headings used in this ACCESS AGREEMENT are merely descriptive and not intended to alter the terms and conditions of the sections.

33. Integrated Agreement. It is understood that this ACCESS AGREEMENT supersedes and cancels any and all previous negotiations, arrangements, representations, agreements, negotiations, and understandings, if any, between the parties related to the subject matter of this ACCESS AGREEMENT and there are no oral agreements that affect any of the terms of this ACCESS AGREEMENT.

34. Amendments. No provision of this ACCESS AGREEMENT may be amended except by an agreement in writing signed by City and Developer. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or other applicable law.

35. Governing Law and Venue. This ACCESS AGREEMENT is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced, and governed under the laws of the State of California without reference to choice of law rules. Any action or proceeding arising out of or related to this ACCESS AGREEMENT shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California.

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(Signature page to follow)

ACCESS AGREEMENT No. _____
(General Purposes)

CITY OF LOS ANGELES
HARBOR DEPARTMENT

DATED: _____, 20__

By: _____
EUGENE D. SEROKA
Executive Director

The undersigned Developer hereby accepts the foregoing ACCESS AGREEMENT and agrees to abide by, to be bound by, and to observe each and every of the terms, conditions, and covenants thereof, including those set forth in any addendum.

SAN PEDRO PUBLIC MARKET, LLC

DATED: _____, 20__

By: _____

(Type/Print Name and Title)

Attest: _____

(Type/Print Name and Title)

APPROVED AS TO FORM AND LEGALITY

_____, 20__
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: _____
HELEN J. SOK, Deputy City Attorney

HJS
Attachments