

PUBLIC WALKWAYS OCCUPANCY PERMIT

1 This Public Walkways Occupancy Permit ("Permit") is granted this 8<sup>th</sup> day  
2 of April, 2010, pursuant to minute order adopted by the City Council of  
3 the City of Long Beach at its meeting held on March 23, 2010, to KRESS MARKET LLC,  
4 a California limited liability company ("Permittee"), whose address is 443 Pine Avenue,  
5 Long Beach California 90802, as the operator of KRESS MARKET and lessee of  
6 premises at 443 Pine Avenue, Long Beach, California.

7  
8 Permission is granted to Permittee to occupy the public right-of-way with  
9 the following obstruction: **low barrier, eight (8) tables and twenty-two (22) chairs** at  
10 443 Pine Avenue, Long Beach, California. Dimensions and location of the area to be  
11 occupied are as shown on Exhibit "A", incorporated by reference and made a part of this  
12 Permit; provided that all obstructions are placed only within the permit area shown on  
13 Exhibit "A".

14 This Permit is granted with reference to the following facts:

- 15 1. Permittee proposes to occupy the public right-of-way as shown on  
16 Exhibit "A"; and
- 17 2. The proposed occupancy will not now or at any time interfere with  
18 continued public use of the public street right-of-way; and
- 19 3. That there is no present or foreseeable conflicting public need for the  
20 proposed use of the public street right-of-way area and its temporary withdrawal from  
21 public use will not be injurious or detrimental to the public; and
- 22 4. That this use of a portion of the public street right-of-way is  
23 consistent with proper and lawful street uses and the use is approved; and
- 24 5. The City Engineer has determined that this use is in compliance with  
25 Chapter 14.14 of the Long Beach Municipal Code, all related to temporary use of the  
26 public rights-of-way.

27 The use of the public street right-of-way is granted upon and subject to the  
28 following terms and conditions:

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1           1.     The minimum width of the public walkway shall be ten (10) feet, or as  
2 otherwise approved by the City Council pursuant to Chapter 14.14 of the Long Beach  
3 Municipal Code, and any obstruction must permit at least five (5) feet of unobstructed  
4 area of public walkway.

5           2.     The obstruction shall abut the property and not be located in a  
6 manner which interferes with the flow of pedestrian or other traffic.

7           3.     The maximum height of any such obstruction shall be six (6) feet and  
8 all such obstructions shall be entirely portable, except as specifically authorized by the  
9 City Engineer.

10          4.     This Permit may be immediately suspended for a designated time  
11 period at any time in the event that, in the discretion of the City Council or City Manager,  
12 such obstruction would interfere with street improvement activities, construction activities,  
13 cleaning efforts or other similar activities.

14          5.     The obstruction shall be kept in a good state of repair and in a safe,  
15 sanitary, and attractive condition.

16          6.     Such obstruction may not be located within twenty (20) feet from an  
17 intersection (measured to the prolongation of the near curb of the intersecting street) or  
18 within ten (10) feet from a driveway or alley (measured to the near end of the fully  
19 depressed portion of an apron-type driveway or to the prolongation of the near curb of the  
20 driveway) unless otherwise approved by the City Council pursuant to the considerations  
21 specified in Chapter 14.14 of the Municipal Code.

22          7.     The public street right-of-way shall be used by Permittee only for the  
23 obstruction described above and in the area shown on Exhibit "A".

24          8.     The area in front of the entrance to the business shall not be  
25 obstructed by barricades, chairs, tables or other furniture.

26          9.     The Permittee shall place all obstructions, and any accessories or  
27 equipment located within a dining or entertainment area, in strict accordance with Fire  
28 Department and Health and Human Services Department standards and contained within

1 Chapter 14.14 of the City of Long Beach Municipal Code.

2 10. No surface improvements, included but not limited to special paving  
3 surfaces, may be removed or altered by the Permittee unless approved in advance in  
4 writing by the City Engineer.

5 11. The Permittee shall not allow cleaning chemicals, or other foreign  
6 matter to flow into the parkway tree well, and shall otherwise protect the health of  
7 adjacent street trees, and shall likewise prevent the discharge of litter, cleaning chemicals  
8 and all other foreign matter to the storm drain system.

9 12. The Permittee shall protect any parkway trees in the immediate  
10 vicinity of the permit area from damage due to the Permittee's cleaning or other activities  
11 on the public walkway. The Permittee shall not interfere with City's access to parkway  
12 trees for maintenance purposes. Any special maintenance of the parkway trees is the  
13 responsibility of the Permittee and must be performed by a qualified landscape contractor  
14 acting under a permit from City's Street Landscaping Division. City shall not be held  
15 financially responsible for damage to Permittee's sidewalk furniture or awnings occurring  
16 in the course of regular street tree maintenance.

17 13. Upon any termination of this Permit, whether by revocation or  
18 otherwise, Permittee shall remove the obstructions authorized by this Permit at the sole  
19 discretion of the City Engineer and shall otherwise restore the public street right-of-way to  
20 a condition substantially the same as existed immediately prior to the occupancy  
21 provided for by this Permit. Should Permittee fail or refuse to remove the obstructions,  
22 City may do so and, in such event, the security deposit paid by Permittee shall be applied  
23 to City's costs. Permittee shall reimburse City for any costs in excess of the security  
24 deposit. In the event of removal by City of all or any portion of the obstructions, City shall  
25 not be liable for any damage to or loss of any property of Permittee.

26 14. The following additional conditions shall apply to public walkway  
27 occupancy permits for dining or entertainment areas:

28 A. Any dining or entertainment area shall be defined by

1 placement of sturdy fencing or other suitable barriers, not to exceed forty-eight (48)  
2 inches in height, as approved by the City Engineer. Such barriers may only be affixed to  
3 public property with the prior approval of the City Engineer.

4 B. All accessories to dining or entertainment uses such as plants  
5 or planter boxes, umbrellas, podiums, menu boards, musical equipment and heaters may  
6 not exceed those enumerated on Exhibit "A", and must be located inside the barrier, as  
7 shown on Exhibit "A".

8 C. All dining and entertainment which takes place on the public  
9 right-of-way shall conform to the requirements of Chapter 8.80 of the municipal code  
10 regarding noise. Complaints regarding noise shall be logged by city staff and may be the  
11 basis for suspension, cancellation, or non-renewal of a permit.

12 D. The Permittee shall be responsible for cleaning the public  
13 walkway occupied by a dining or entertainment area.

14 15. Any permit issued within the downtown area as defined on Exhibit  
15 "B" and made a part of this Permit shall comply with all of the foregoing requirements and  
16 the following additional requirements:

17 A. No tents or windbreaks may be used in, over, or around dining  
18 or entertainment areas.

19 B. Temporary banners, not exceeding the height of the barrier  
20 and attached to the barrier are permitted for a two (2) week period no more than four (4)  
21 times per year.

22 C. Menu boards must be portable, located within the dining area,  
23 and must not exceed five (5) feet, six (6) inches tall. Menu boards may be either a single  
24 pole pedestal of painted metal or a board attached to the inside of the barrier, parallel to  
25 the barrier.

26 D. The following are prohibited on the public walkway in the  
27 downtown area: television monitors, canopies and A-frame signs.

28 16. Upon expiration, a new permit must be obtained on the basis of a

1 new application and payment of a new fee and any security deposit amount due.  
2 Renewal of the permit is not automatic and there is no right or entitlement to any use of  
3 the public right-of-way. Security deposits may be adjusted from year to year based on  
4 permit compliance and enforcement cost history. This Permit shall never be construed  
5 as the grant by City of any right to permanently use or occupy all or any portion of the  
6 public right-of-way; nor shall it ever be construed as a waiver on the part of City, or as an  
7 estoppel against it, which would in any manner whatsoever bar or limit, or otherwise  
8 prejudice, its right to at any time whatsoever require a discontinuance of the use or  
9 occupancy of all or any part of the public street right-of-way, the removal therefrom of all  
10 or any obstructions erected or maintained under this Permit and the restoration of such  
11 public street right-of-way to a clean condition, all at the sole cost and expense of  
12 Permittee.

13           17. Notices of violation of any of the terms and conditions of this permit  
14 may be issued by the City of Long Beach. Within the downtown area as defined on  
15 Exhibit "B", preliminary informal notices may be issued by Downtown Long Beach  
16 Associates. The enforcement process is set forth on Exhibit "C", attached hereto, and  
17 made a part of this permit. Notwithstanding the above, City may revoke this Permit at  
18 any time by giving thirty (30) days written notice to Permittee or cancel the permit for  
19 noncompliance with its terms. Such notice shall be signed by the City Manager, postage  
20 pre-paid, and addressed to Permittee at its address provided above.

21           18. Permittee accepts this public right-of-way in its present condition and  
22 agrees to maintain the same in a safe, clean, and orderly condition. Any and all uses  
23 made of the public right-of-way shall be at the sole risk, cost, and expense of Permittee.  
24 Permittee, by its acceptance of this Permit, agrees to indemnify, defend, save and keep  
25 City, its officers, agents, and employees free and harmless from and against any and all  
26 liability as well as from and against any and all loss, claims, demands, damages,  
27 expenses and costs of whatsoever nature arising out of or in any manner resulting,  
28 directly or indirectly, from Permittee's operations on or the condition, use or misuse of the

1 public street right-of-way, including liability, claims or damages to or as a result of any  
2 structures or fixtures on the public street right-of-way or appurtenances to it.

3           19. In partial performance of this obligation, Permittee shall obtain and  
4 keep in full force and effect such public liability insurance and property damage insurance  
5 as required by the Long Beach Municipal Code.

6           20. Nothing in this Permit shall be construed to excuse compliance by  
7 Permittee with any and all of the laws and ordinances of City and State; neither shall this  
8 Permit be deemed to obviate the necessity of Permittee's obtaining such other permits or  
9 licenses as are required to conduct specific activities within the area, including but not  
10 limited to entertainment or the sale, service or consumption of alcoholic beverages.

11           21. The terms of this permit shall be enforced by the procedure set forth  
12 on Exhibit "C", attached and made a part of this permit.

13           22. In case suit shall be brought for the recovery of possession of all or  
14 any portion of the public right-of-way or because of the breach of any covenant contained  
15 in this Permit to be kept and performed on the part of Permittee, Permittee shall pay to  
16 City reasonable attorneys' fees which shall be fixed by the court.

17           23. Permittee shall not assign this Permit, or any interest in it, nor shall  
18 this Permit, or any interest in it, be subject to transfer or assignment by order of any  
19 court. Any such transfer or assignment shall not create any right whatsoever in the  
20 transferee or assignees and shall entitle the City Manager, at his discretion, to terminate  
21 this Permit.

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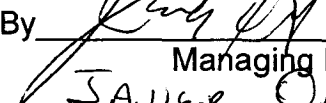
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1 The acceptance of this Permit by Permittee shall be endorsed on this  
2 Permit and shall be an acceptance by Permittee of all of the terms and conditions of this  
3 Permit and an agreement to abide and comply with it. Permittee further acknowledges  
4 that Permittee is aware of the requirements of Long Beach Municipal Code Chapter  
5 14.14, and that Permittee shall conduct all activities hereunder in compliance with such  
6 chapter.

7 KRESS MARKET LLC, a California limited  
8 liability company

9 FEBRUARY 24, 2010

By   
10 Managing Member  
11 JAVIER ORTIZ  
12 Type or Print Name

13 "PERMITTEE"

14 CITY OF LONG BEACH, a municipal  
15 corporation

16 April 8, 2010

By   
17 Assistant City Manager  
18 City Manager

19 "CITY"

20 EXECUTED PURSUANT  
21 TO SECTION 301 OF  
22 THE CITY CHARTER

23 Approved as to form this 30<sup>th</sup> day of March, 2010.

24 ROBERT E. SHANNON, City Attorney

25 By   
26 Deputy City Attorney

27 OFFICE OF THE CITY ATTORNEY  
28 ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664





**List of Approved Furnishings and Accessories**  
(Attachment to Public Walkways Occupancy Permit for Sidewalk Dining Purposes)

Restaurant: KREISSMARKET Permittee: KREISS MARKET  
Address: 443 SINE Telephone: 562-715-4142

Tables number: 8

Chairs number: 22

Umbrella(s) height & number: \_\_\_\_\_  
\_\_\_\_\_

Heater(s) height & number: \_\_\_\_\_  
\_\_\_\_\_

Menu board  
note: maximum height of 5 ft 6 in, maximum width of 2 ft & none permitted in the coastal zone

Waiter station size: \_\_\_\_\_

Planters for trees or other greenscaping describe: \_\_\_\_\_  
\_\_\_\_\_

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We intend to make occasional use of the permit area for live or recorded entertainment (Note: A separate entertainment permit is required).

**The following are prohibited:**

- canopies (ground supported)
- television monitors

Permittee signature: Javier Ortiz

Date: 12/3/9

Print name here: JAVIER ORTIZ

This list of furnishings and accessories is effective only when attached to a completed Public Walkways Occupancy Permit.

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**EXHIBIT "B"**

"Downtown area" means the area bounded northerly by the centerline of Tenth Street; westerly by the centerline of Maine Avenue north of First Street, and the centerline of Golden Avenue south of First Street and the centerline of Golden Shore and its southerly prolongation; easterly by the centerline of Lime Avenue north of First Street and the centerline of Alamitos Avenue and its southerly prolongation south of First Street; southerly by the mean high tide line of the Pacific Ocean and its prolongation across the entrance to Pacific Terrace Harbor and Queen's Way Landing Boat Basin.

**EXHIBIT "C"**

**PUBLIC WALKWAYS OCCUPANCY PERMITS  
ENFORCEMENT PROCESS**

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1. Letter of information sent to permittee regarding Municipal Code requirements and requested to correct an observed violation of permit conditions.
  - If not remedied in ten (10) working days, send official Notice of Violation.
2. Notice of Violation
  - Indicates that permittee can be found in default for failure to comply with permit conditions per Municipal Code Section 14.14.090.
  - Notes that uncorrected violations will be reported to the City Council at the next permit application.
  - Alerts permittee that the Alcoholic Beverage Control (ABC) will be notified of all permits declared in default.
  - If violation of permit conditions is not corrected within ten (10) working days, send Second Notice of Violation by certified mail.
  - Copies of Notice of Violation to be sent to the City Manager, Downtown Long Beach Associates (DLBA) and the Redevelopment Agency.
3. Second Notice of Violation
  - Inform permittee that "On (date 10 working days hence) you will receive a Notice of Default if permit violations not corrected."
  - If permit violations not corrected within ten (10) working days, send Notice of Default by certified mail.
  - Copies of Second Notice of Violation to be sent to the City Manager, DLBA and the Redevelopment Agency.
4. Notice of Default by Department of Public Work
  - Provides permittee ten (10) working days to remedy violation.
  - "If permittee fails or refuses to remedy the default within the time specified, the right of the permittee to use the public walkway shall cease and City shall have the right to remove the public walkway obstruction at permittee's expense" (LBMC 14.14.090).
  - If a Notice of Default is issued, the security deposit that was paid with the permit application will be forfeited.
  - Second ABC notice of permit status upon actual default.
  - City Manager, DLBA and Redevelopment Agency informed when final default occurs.
5. City pick-up of obstructions at permittee's expense and/or possible legal action to restrain use of sidewalk by the City Prosecutor.
6. Prior to New Permit Issuance
  - Payment of new permit processing fee and security deposit.
  - Payment of any fees, damages, or City costs assessed for prior code enforcement actions.