

POMPEI ENTERPRISES CORPORATION

Lease: Restaurant; Seawall Lot 302;

November 12, 1975

L-8988

RESOLUTION:

TENANT NO. 47516

BOARD OF SUPV. ORD:

USE: First Class Seafood and Italian Rest. & Related

AMENDED:

CONTACT: Frank Pompei
TITLE: President
PHONE: 776-9265

LEGAL: Pompei Enterprises Corp.
A California Corporation
NOTICES Frank Pompei
C/O Frank Pompei's Grotto
349 Jefferson Street, S.F. CA. 94133

BILLING: 340 Jefferson St.
San Francisco, CA.
94133

PREMISES & LOCATION: 4140 Sq. Ft. Portion of SWL 302

TERM: 61 years (4/1/75-4/20/2036)

OPTION:
NOTICE:

RENT: Monthly Minimum Plus 5 Years CPI Vs. Percentage

- | | |
|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| a) 1st 5 yrs. (4/1/75-3/31/80) @ \$2,430.00 | a) Food.....5% |
| 2nd 5 yrs. (4/1/80-3/31/85) @ 3,749.25 | Alcohol/Bar.....7% |
| 3rd 5 yrs. (4/1/85-3/31/90) @ | All Other.....10% |
| b) Open for CPI adjustment every 5 yrs.
Next <u>4/1/85</u> | b) Open to review on or before any 5 yrs; increase or decrease to comparable in area: Powell, North Point, Van Ness (exclud. hotel) |
| c) Base Index (1967=100) as of March 1975 @ <u>156.0</u> | |

DEPOSIT: One month's rent as adjusted

TAXES: By Tenant

CANCELLATION: 1) 2nd grossly negligent or purposely made understatement shall result in cancellation of this lease

2) By tenant, if disagrees with new percentage rental; 6 months notice, but tenant pays in interim.

PENALTIES: 1) If tenant materially underslates gross sales, cost of audit to be borne by tenant.
2) First grossly negligent or purposely made understatement, penalty is 10 times amount that should have been paid.

ASSIGNMENT: Not without prior written consent of Port which shall not be unreasonably withheld.

SUBLETTING: Not without prior written consent of Port which shall not be unreasonably withheld.

<u>UTILITIES:</u>	<u>SUPPLIER</u>	<u>PAYMENT BY</u>	<u>SYSTEMS REPAIRS</u>	<u>FIXTURES REPAIRS</u>
-------------------	-----------------	-------------------	------------------------	-------------------------

(Not mentioned)

MAINTENANCE AND REPAIR: Port has no responsibility to maintain premises; tenant maintains all premises and appurtenances in good and sanitary condition and repair; "force majeure" tenant must comply with Port recommended work.

JANITORIAL: Tenant PL/PD: 500,000/1,000,000- \$100,000 (15 days notice); periodic review but not less than every 10 yrs. next 5/1/85.

HOLD HARMLESS: By tenant FIRE: 90% replacement (15 days notice) revenue protection.

- SPECIAL:
- 1) Tenant to conduct his business to preserve and enhance fishing oriented atmosphere of wharf.
 - 2) Reasonable right of entry reserved to Port
 - 3) Mineral rights reserved to State.

1. Letting	1
2. Rental	1
3. Guarantee Deposit	5
4. Default and Re-entry	6
5. Use of Premises	8
6. Requirement that Premises be Used	9
7. Maintenance of Improvements and Atmosphere	9
8. Alterations and Improvements	11
9. Prohibited Uses	12
10. Assignment and Subletting	12
11. Security Interests	13
12. Insolvency	16
13. Comprehensive Public Liability Insurance	16
14. Indemnification	17
15. Waiver of Claims	18
16. Liens	18
17. Fire Insurance	18
18. Taxes	21
19. Compliance with Law	21
20. Entry	21
21. Condemnation	22
22. Maintenance by Tenant	23
23. Nondiscrimination Provisions	26
24. Waiver of Breach	26
25. Successors	26
26. Modification of Lease	26

	<u>Page</u>
27. Holding Over	27
28. Quit Claim	27
29. Mineral Reservation	27
30. Notices	28
31. Time is of Essence	28
32. Captions	28

THIS LEASE, made on the 12th day of March 1975, between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the SAN FRANCISCO PORT COMMISSION, hereinafter called "PORT," Landlord, and POMPEI ENTERPRISES CORPORATION, a California Corporation, hereinafter called "TENANT;"

WITNESSETH:

1. Letting. PORT hereby leases to TENANT the real property and improvements thereon situated in the City and County of San Francisco, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, and all replacements of and additions to said improvements made during the term to have and to hold for the term of sixty-one (61) years commencing on April 1, 1975 and terminating April 20, 2036. Said real property and the improvements thereon, and all replacements thereof and additions thereto, are hereinafter collectively called the "leased premises."

2. Rental. During the term hereof TENANT will pay rent to PORT as follows:

(a) Minimum Rental. TENANT agrees to pay a minimum rental for that area described in Exhibit "A" for the first five (5) years of the term hereof in the amount of \$2,430 per month, payable in advance on the first day of each month. (If TENANT goes into occupancy, or if this lease commences on other than the first day of month, the rent for that month will be apportioned as the number of days of occupancy bears to the month. The anniversary date of this lease will, however, in that case, be the first day of the

month following the date of actual occupancy. If the lease commences on the first of the month the anniversary date will be that date). At the end of the fifth year of the lease, and at the end of every five-year period thereafter, the minimum rental shall be adjusted for the succeeding five-year period, commencing with the anniversary date in direct proportion to any increase or decrease in the cost of living index from the base date to the last date prior to the anniversary date for which the index is published. The cost of living index shall mean the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index (all items; 1967 = 100), San Francisco-Oakland, California. If the aforesaid index is no longer published, the PORT shall use such index as is substantially similar in nature to the present publication, and appropriate adjustment shall be made, if necessary. The date on which the base shall be determined shall be the quarter ending the month of March 1975, and the parties agree that the index was 156.0 for that month.

The entire amount of the minimum rental paid to PORT shall be applied as a credit to the percentage rental due for the month for which the minimum rental was paid, when the percentage rental shall become due and payable.

(b) Percentage Rental. In addition to the minimum rental, TENANT agrees to pay PORT that percentage of gross receipts as herein defined received by TENANT for that use which is set forth opposite that use in the following table:

Percentage Rental
For That Use

Alcoholic beverages and all other items sold through the bar.....	<u>7%</u>
Food.....	<u>5%</u>
All Other Uses.....	<u>10%</u>

Gross receipts means all amounts received and receivable from all sales and business transacted by TENANT on the leased premises, or services performed on the leased premises for which a charge is made by TENANT, or by any other person, firm or corporation (including concessionaires) conducting sales or performing services of any sort in, upon, or from any part of the leased premises, and shall include sales and charges for cash and credit, regardless of collections in the case of the latter, but shall exclude returns and refunds and shall exclude the amount of any sales tax, or similar tax or imposition imposed on such sales or charges where such sales tax or similar tax or imposition is billed to the purchaser as a special item, and shall exclude meals served to employees of TENANT during the course of employment whether such meals are served with or without charge, or whether such meals are treated as meals sold for any other purpose. Such percentage rental shall be determined by TENANT for each month of the year and shall be payable by the twentieth (20th) day of the following month. The percentage rental shall commence as soon as sales are made on the premises, and shall continue so long as sales are made on the premises. In the event this lease terminates during a month, payment of the percentage rental for that portion of

the month during which sales are made on the premises shall be determined and reported by TENANT to PORT within twenty (20) days after TENANT ceases to make sales on the premises, but in the event this lease terminates for fault of TENANT, including insolvency thereof, any amounts due hereunder shall be payable forthwith.

At the time of paying percentage rental TENANT shall furnish a statement showing the computation of percentage rental for the period covered by such payment. TENANT agrees to make available to PORT, or any City auditor, all of its books and records, which books and records shall be maintained in San Francisco for the purposes of auditing or re-auditing these accounts for three (3) years, except that if audit is made within that time and the PORT claims errors or omissions have occurred, the books shall be retained and made available until the matter is finally determined. Sales tax returns shall be made available for purposes of conducting the audit. PORT shall keep confidential, so far as legally possible, all such information obtained from TENANT and TENANT shall not be required to keep records for more than three (3) years. If TENANT materially understates its gross sales for any month, the cost of the audit for that month shall be borne by TENANT. If TENANT understates its gross sales for any month with knowledge of such understatement or by reason of gross negligence or gross carelessness in addition to the foregoing, on the first such occasion TENANT shall pay PORT ten (10) times the amount PORT should have received. A second such understatement made with knowledge of or by reason of gross negligence or gross carelessness shall result in cancellation of this lease.

(c) If either party so elects the percentage rental used in this paragraph shall be reviewed on or before the anniversary date each five years during the term of this lease but not more often than every five years. If PORT determines that the percentages for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the date of determination, the percentages provided for herein shall likewise be increased or decreased. PORT agrees to survey comparable restaurants, excluding hotel restaurants, in an area bounded by Powell Street on the East, North Point Street on the South, and Van Ness Avenue on the West for the purpose of establishing percentage rental adjustments pursuant to this paragraph 2(c). In the event that TENANT does not agree with PORT as to the proper percentage, it shall so advise PORT and TENANT may terminate this lease within six (6) months after setting of said percentage rental by PORT, but shall pay at the percentage rent established by PORT.

3. Guarantee Deposit. TENANT shall, when the term commences, in addition to the advance payment of the first month's minimum rent, deposit with PORT, either in cash or in securities acceptable to PORT, or by bond or undertaking written with an insurer admitted in California and in a form acceptable to PORT, an amount equal to one month's minimum rent, which amount shall be held by PORT as a guarantee for the future payment of rent. Such amount shall guarantee also the payment of any and all damages suffered by PORT by reason of the tenancy by TENANT, and the full and faithful performance of any and all covenants and agreements of this lease. If the minimum rent is increased,

the guaranteed amount shall be increased accordingly. The form of deposit of security may be changed from time to time by mutual consent. If TENANT wishes to use a bond as security, it must supply evidence of satisfactory renewal or reissuance promptly and prior to the expiration of any existing bond. If TENANT wishes to deposit securities, TENANT may deposit the securities in a depository mutually acceptable to the parties and may obtain all interest payable on the securities as the same becomes due.

4. Default and Re-entry. If any rental or other payment shall be due and unpaid for thirty (30) days, or if any other material default shall be made by TENANT in any of the conditions or covenants of this lease and said other material default shall continue for thirty (30) days after notice in writing to TENANT, then PORT, besides any other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises, providing, however, that if the default cannot be cured in thirty (30) days, TENANT shall have such additional time as may be required, provided it commences to remedy the default and continues to so remedy the default with due diligence; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of TENANT. Should PORT elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this lease or it may from time to time, without terminating this lease, relet said premises.

or any part thereof to a tenant suitable to PORT for such term or terms (which may be for a term extending beyond the term of this lease) and such conditions as PORT may deem advisable under provisions set forth in Paragraph 7 with the right to make alterations and repairs to said premises; upon each such reletting (a) TENANT shall be immediately liable to pay to PORT, in addition to any indebtedness other than rent due hereunder, the cost and expense of such reletting incurred by PORT, including the cost of alterations or repairs to the extent that TENANT was obligated by this lease to make such alterations or repairs, and the amount, if any, by which the rent reserved in this lease for the period of such reletting (up to but not beyond the term of this lease) exceeds the amount agreed to be paid as rent for the leased premises for such period on such reletting; or (b) at the option of PORT, rents received by PORT from such reletting shall be applied, first, to the payment of any indebtedness, other than the rent due hereunder from TENANT to PORT; second, to the payment of said costs and expenses of such reletting; third, to the payment of rents due and unpaid hereunder; and the residue, if any, shall be held by PORT and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting under option (b) during any month be less than that to be paid during that month by TENANT hereunder, TENANT shall pay any such deficiency to PORT. Such deficiency shall be calculated and paid monthly. In calculating value of percentage rental it shall be deemed the rent payable for the previous twelve (12) months prior to ..

breach is the yearly rental value of the premises. If the breach occurs before twelve (12) months of percentage rent has become due and is paid, the monthly amount payable as percentage rent shall be averaged and extended on a twelve-month basis. Monthly rent shall be one-twelfth (1/12th) of the yearly amount. No such re-entry or taking possession of said premises by PORT shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to TENANT or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, the PORT may at any time thereafter elect to terminate this lease for such previous breach. Should PORT at any time terminate this lease for any breach, in addition to any other remedy it may have, it may recover from TENANT all damages it may incur by reason of such breach, including the cost of recovering the premises and including the worth at the time of such termination of the excess, if any, of the amount of rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from TENANT to PORT.

5. Use of Premises. The premises shall be used to conduct first class seafood and Italian Restaurant and bar, and such other uses as are reasonably related thereto, including, but not limited to, such other uses as TENANT has heretofore conducted on the demised premises. Changes in the type or class of business or changes in other uses shall be made only upon the express written consent of PORT.

6. Requirement That Premises be Used. TENANT shall operate to secure the maximum economic return based on the uses specified. It is the intent hereof that a TENANT shall not acquire the use of the property through a lease and then not use it. Accordingly, if TENANT fails to use the property for the purposes for which the property is leased, or in the manner set forth herein, the PORT shall serve a written notice by certified mail upon TENANT personally or by mail, postage prepaid, to TENANT's address set forth hereinafter requesting that TENANT use the property as required. If such failure shall continue for thirty (30) days after the mailing of such notice and unless such failure shall be for reasons beyond the control of TENANT, then the PORT at its option may terminate this lease.

7. Maintenance of Improvements and Atmosphere.

(a) Improvements on the leased premises shall be maintained by TENANT in good operating condition throughout the term of this lease. PORT shall have no obligation whatever to maintain the premises during the term of this lease, even though PORT elects to take title to the improvements at the termination of this lease.

(b) At PORT's election TENANT shall be obligated at its own expense to demolish and remove down to ground level, leaving the premises free from debris, such improvements that TENANT has made as are or will be, at the termination of this lease, not reasonably capable of continued occupancy for three or more years immediately following such termination without substantial repairs or renovations.

(c) Within ninety (90) days but not less than sixty (60) days prior to the termination of this lease, unless termination should be the result of loss or destruction of the improvements, in which event written notice only shall be required of PORT, PORT shall advise TENANT as to which improvements or portions of improvements it elects to have demolished and removed in accordance with subparagraph (b). In the event that removal or demolition is required under subparagraph (b) but TENANT fails to make such demolition and removal within sixty (60) days after the expiration or prior termination of the lease, PORT may perform such work at TENANT's expense.

(d) Trade fixtures installed on the leased premises shall be and become a part of the realty and shall be maintained by TENANT, except that trade fixtures may be removed by TENANT at the termination of the lease, providing TENANT repairs any damage such removal may make to the leased premises and leaves the premises free and clear of debris. The buildings, fences, parking lots and similar structures shall not be regarded as trade fixtures but as "improvements."

(e) TENANT shall keep said premises and appurtenances, including all glazing, in good and sanitary order, condition and repair. TENANT shall maintain the premises so as to insure an appropriate operation consistent with operations on the premises as of the beginning of the term.

(f) The parties agree that the atmosphere and character of Fisherman's Wharf, its commercial fishermen,

its fish processors, and fishing oriented businesses are a unique asset to San Francisco resulting in a major tourist attraction. Accordingly, TENANT agrees to conduct its business henceforth in a manner to preserve and enhance the present fishing-oriented uses at the Wharf.

8. Alterations and Improvements. Except for nonstructural changes, TENANT shall not make, nor suffer to be made, any alterations or improvements to the said premises (including the installation of any trade fixtures affixed to the premises or whose removal, if not affixed, will cause injury to the premises) without first obtaining the written consent of the PORT. Any additions to or modifications to the said premises which may not be removed without substantial injury to the premises shall become a part of the realty and shall belong to the PORT unless the PORT waives its rights hereunder in writing. Notwithstanding paragraphs 7(b) and 7(d), PORT may require TENANT to remove any or all such additions or modifications not approved by the PORT upon termination of this lease, and PORT may require TENANT to repair any damage occasioned thereby at TENANT's expense. TENANT shall leave the premises at any termination of this lease, free and clear of all debris, and shall repair any damage to the premises for which TENANT is liable under this lease, subject to such adjustments as may be mutually agreed in writing. If TENANT fails to remove any improvements, furniture or trade fixtures when requested to do so by the PORT, or fails to leave the property in the condition required herein, the PORT may remove such items and correct

such condition at TENANT's expense, and charge said costs against the guarantee deposit.

TENANT's improvements as of the date of execution of the within lease on the leased premises have totalled \$456,000. All such improvements have been made by TENANT without amortization or other offset or reduction in rent to the PORT.

9. Prohibited Uses. TENANT shall not use, or permit said premises, or any part thereof, to be used, for any purposes other than the purpose or purposes for which the premises are leased. TENANT agrees not to perform any act on the premises which will cause a cancellation of any insurance policy covering the premises, or any part thereof. TENANT agrees not to violate any law, ordinance, rule or regulation affecting the occupancy and use of said premises of any governmental agency having jurisdiction over the premises. TENANT further agrees not to obstruct or interfere with the rights of PORT's other tenants or licensees.

10. Assignment and Subletting. TENANT shall not assign this lease or any interest therein except as provided herein and shall not sublet the said premises or any part thereof or any right or privilege appurtenant thereto, or suffer any other person to occupy or use any portion of the premises without first obtaining the written consent of the PORT, which consent shall not be unreasonably withheld. A consent to one assignment, subletting, occupation or use by one person shall not be construed as a consent to a subsequent assignment, subletting, occupation or use by another. Each such assignment or subletting without consent shall be

void. No interest in this lease shall be assignable as to TENANT's interest by operation of law without PORT's written consent.

11. Security Interests.

The parties acknowledge that the TENANT may from time to time encumber TENANT's leasehold estate to all or in part by the lien of a mortgage, deed of trust or other security instrument to institutional lenders. For the express benefit of all such secured parties (hereinafter referred to as "LENDER"), the parties agree as follows:

(a) The execution of any mortgage, deed of trust or other security instrument, or the foreclosure thereof or any sale thereunder or conveyance by TENANT to LENDER, or the exercise of any right, power or privilege reserved therein, shall not constitute a violation of any of the lease terms or conditions or an assumption by LENDER, personally, of TENANT's obligations hereunder except as provided in subparagraph (c) below.

(b) The LENDER, at its option, may at any time before the PORT's exercise of any of its rights pursuant to paragraph 4 hereof, or before the expiration date of the period specified in subparagraph (a) below, whichever last occurs, perform any of the covenants and conditions required to be performed hereunder by the TENANT, to the extent that such covenants and conditions are applicable to the portion of the leased premises encumbered by such lien. Any performance of TENANT's duties by the LENDER shall be effective to prevent the termination of this lease.

(c) The PORT hereby agrees with respect to any such security instrument that the LENDER may record such

security instrument and may enforce such security instrument and upon foreclosure sell and assign TENANT's interest in the premises and improvements thereof to another from whom it may accept a purchase price subject, however, to first securing written approval from the Port Commission which approval shall not be unreasonably withheld. LENDER, furthermore, may acquire title to the leasehold and improvements in any lawful way, and if the LENDER shall become the assignee, LENDER may sell or assign said leasehold and TENANT's interest in any improvements thereon. If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a proper conveyance from TENANT, LENDER shall take subject to all of the provisions of this lease, and shall assume personally all the obligations of TENANT hereunder.

(d) If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a conveyance from TENANT in lieu of foreclosure, the LENDER may sublease such portion for any period or periods within the term of this lease, or may assign TENANT's leasehold estate hereunder by sale or otherwise, after first having approval in writing from Port Commission, which approval shall not be unreasonably withheld, provided that all others taking through the LENDER and their respective successors in interest shall take said leasehold estate and assume all of the covenants and conditions therefore and agree to perform all such covenants and conditions.

(e) No such foreclosure or other transfer of TENANT's leasehold estate nor the acceptance of rent by the

PORT from another shall relieve, release or in any manner affect TENANT's liability hereunder.

(f) If an event of default under paragraph 4 hereof occurs, LENDER shall have thirty (30) days after receipt of written notice from the PORT specifying TENANT's default to remedy such default. If LENDER shall have commenced appropriate proceedings in the nature of foreclosure within such thirty (30) days' period and is diligently prosecuting the same, LENDER shall have a reasonable time beyond thirty (30) days within which to cure such default. PORT's right to exercise its rights pursuant to paragraph 4 hereof shall at all times, while the TENANT is indebted to the LENDER, be subject to and conditioned upon the PORT's furnishing LENDER such written notice and the LENDER having failed to cure such default as provided herein. The fact that the time has expired for performance of a covenant by the TENANT shall not render performance by the LENDER or a purchaser impossible. If the LENDER or any purchaser shall promptly undertake to perform the TENANT's defaulted obligation and shall diligently proceed with such performance, the time for such performance shall be extended by such period as shall be reasonably necessary to complete such performance. If the LENDER is prevented, by any process, injunction or other order issued by any court having jurisdiction in any legal proceedings, it shall be deemed to have prosecuted said proceedings for purposes of this subparagraph (e); provided, however, that the LENDER shall use reasonable efforts to contest and appeal the issuance of any such process, injunction or other order.

(g) The LENDER shall give written notice to the PORT of its address and the existence and nature of its

security interest. Failure to give such notice shall constitute a waiver of LENDER's rights to receive written notice hereunder.

12. Insolvency. If (a) the appointment of a receiver to take possession of all or substantially all of the assets of TENANT is made and such assets are not released within thirty (30) days, or if (b) a general assignment is made by TENANT for the benefit of creditors or if (c) any action taken or suffered by TENANT under any insolvency or bankruptcy act, unless TENANT within thirty (30) days cures or proceeds with diligence to cure, is taken, any of such occurrences shall, at the option of the PORT, constitute a material breach of this lease.

13. Comprehensive Public Liability Insurance. TENANT shall maintain and pay premiums on a policy or policies of liability insurance, which name PORT and the City and County of San Francisco, their officers, agents, and employees, as additional insureds, with a company or companies acceptable to PORT. Such policy or policies shall cover the leased premises and its operation against claims for personal injury and death in an amount of not less than \$500,000.00 for injury or death of any one person, and \$1,000,000.00 for injury or death of all persons in any one accident, and \$100,000.00 for property damage. TENANT shall furnish to PORT a certificate evidencing the fact that the insurance described in this paragraph has been obtained and is in full force and effect and that such insurance cannot be cancelled or a change made affecting coverage within fifteen (15) days' prior notice to PORT. TENANT shall

promptly notify PORT of any change in the terms of such policy or policies and shall provide PORT with copies thereof. Said policy or policies shall either contain a broad form of contractual liability coverage, including leases, or there shall be attached to the policy or policies an endorsement providing that such insurance as is provided for therein shall apply to the obligations assumed by TENANT under this lease. The procuring of this policy or policies shall not be construed to be a substitute in any respect for TENANT's obligations under this lease. TENANT and PORT shall periodically review the amount of the public liability insurance carried pursuant to this paragraph, but in any event not less than every ten (10) years during the term of this lease. If it is found to be the general commercial practice in the City and County of San Francisco to carry public liability insurance in an amount substantially greater or lesser than the amount then being carried by TENANT with respect to risks comparable to those associated with the leased premises, the amount carried by TENANT shall be increased or decreased to conform to such general commercial practice.

14. Indemnification. PORT and the City and County of San Francisco, their officers, agents, and employees, shall, except as hereinafter provided, be free from liabilities and claims for damages, and suits for or by reason of any injury or injuries to any person or persons, or property brought upon or affixed to the premises, of any kind whatsoever, from any cause or causes whatsoever except for intentionally harmful or negligent acts committed solely by PORT, or the City and County of San Francisco, or their officers, agents, or employees while in, upon, or adjacent

to, or in any way connected with the leased premises, or in any occupancy of said leased premises by TENANT, and TENANT hereby covenants and agrees to save harmless the PORT and the City and County of San Francisco from all such liabilities, claims for damages, suits, and litigation expenses.

15. Waiver of Claims. TENANT, as a material part of the consideration to be rendered to PORT, hereby waives all claims against PORT, except for intentionally harmful or negligent acts committed solely by PORT, its officers, agents, or employees, and agrees to hold PORT harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment and persons in, upon, or about said premises, except for intentionally harmful or negligent acts committed solely by PORT, its officers, agents, or employees, arising at any time from any cause.

16. Liens. TENANT shall keep the demised premises and the improvements thereof free from any liens arising out of any work performed, materials furnished, or obligations incurred by TENANT.

17. Fire Insurance.

(a) TENANT shall maintain fire and extended coverage insurance on the leased premises. Each policy shall name the PORT and the City and County of San Francisco as additional insureds. Each insurance company insuring the premises shall be acceptable to PORT. Each policy shall cover the improvements on the leased premises, except the substructure, in an amount of at least ninety (90%) percent of the replacement value thereof. If TENANT cannot obtain insurance covering ninety (90%) percent replacement value at

a reasonable cost, then TENANT shall so notify PORT and shall be entitled to carry such lesser insurance as is prudent under the circumstances. TENANT shall furnish PORT with a certificate evidencing such insurance and stating that such insurance cannot be cancelled or a change made in coverage without the insurer first furnishing fifteen (15) days advance written notice to PORT.

TENANT agrees to notify PORT promptly of all changes in the terms of each policy and agrees to provide PORT with copies thereof. Any funds received by TENANT from any damage which is covered by such insurance policy shall be immediately deposited by TENANT in a trust account in the names of the TENANT and the PORT for repair or replacement of the improvements on the leased premises. The funds in said account shall be used solely for repairs and replacements on the premises. TENANT agrees to further make such repairs and replacements to the full extent of the funds recovered under the policy or policies. Plans and specifications for such repairs and replacements shall be submitted to and approved by the Chief Engineer of PORT which approval shall not be unreasonably withheld. If TENANT declines to repair the damage or replace the improvements to the full extent of the proceeds, the portion of the proceeds representing payment for damage for which title has vested in PORT shall be conveyed to PORT free of all claims. If TENANT fails to repair as provided herein, PORT may elect to make such repairs and replacements itself from such funds, but PORT shall not be required to use the funds for such

repair or replacement. TENANT may, if it so elects repair and replace in an amount greater than the funds derived from the policy, but in that event it shall have no claim against PORT for any excess funds spent. Title to all improvements, including trade fixtures, other than trade fixtures removable without injury to the premises, shall immediately vest in PORT on repair or replacement.

(b) TENANT shall cause to be maintained throughout the term of this lease a standard policy of insurance against the loss of income or revenue to PORT as a result of the loss of use of the leased premises caused by the perils insured against in the policy or policies for fire and extended coverage on the improved premises. The income loss to PORT shall be, for each month, one-twelfth (1/12th) of the annual average rental paid by TENANT in the preceding twelve calendar months and said payment shall continue to PORT as rent due hereunder for the period from the date of the damage to the date business is recommenced on the premises.

(c) If (i) more than fifty (50) percent of the premises are destroyed or are so damaged by fire or other casualty insurable under full standard extended risk insurance as to become wholly untenable, or (ii) the premises shall be partially or totally destroyed by a cause or casualty other than those covered by fire and extended coverage risk insurance, then, in either event, PORT may, if it so elects, rebuild or put the premises in good condition and fit for occupancy within a reasonable time after such destruction or damage, or it may give notice terminating this lease as of a date not later than thirty (30) days after

any such damage or destruction. In the event of such termination the fire insurance proceeds required per paragraph 17(a) shall be distributed between PORT and TENANT as their respective interest may appear. If PORT elects to repair or rebuild, it shall within thirty (30) days after such damage or destruction, give TENANT notice of its intention and then shall proceed with reasonable speed to make the repairs or to rebuild. Unless PORT elects to terminate this lease, this lease shall remain in full force and effect and the parties waive the provisions of any law to the contrary.

18. Taxes. TENANT agrees to pay to the proper authority any and all taxes, assessments and similar charges on the leased premises in effect at the time this lease is entered into, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy, as distinguished from the ownership of the premises and property.

19. Compliance with Law. The premises are not to be used in such manner nor shall business be conducted thereon which shall in any way conflict with any valid law, ordinance, rule, or regulation applicable to the premises, affecting the occupancy or use of the leased premises. TENANT's substantial failure to abide by any law, ordinance, rule, or regulation imposed on the premises will be deemed a violation of a condition of this lease.

20. Entry. The right is hereby reserved to PORT, its officers, agents, and employees to enter upon the leased premises at any reasonable time for the purpose of reasonable inspection and inventory, and when otherwise deemed reasonably necessary for the protection of its interests. TENANT

waives all claims against the PORT, or any officer, agent or employee thereof for damages caused in the PORT's reasonable exercise of its right hereunder. There shall be no rebate of rent or any claim against the PORT for any loss of occupation or quiet enjoyment of the premises occasioned by such inspection and inventory.

21. Condemnation.

(a) If title to the entire premises is taken for any public or quasi-public use under any statute, or by right of eminent domain, or by private purchase in lieu of eminent domain, or if title to so much of the premises is taken that a reasonable amount of reconstruction of the premises will not result in the premises being a practical improvement and reasonably suitable for TENANT's continued occupancy for the uses and purposes for which the premises are leased, then, in either event, this lease shall terminate on the date that possession of the premises, or part of the premises is taken.

(b) If any part of the premises shall be so taken and the remaining part of the premises (after reconstruction of the then existing building in which the premises are located) is reasonably suitable for TENANT's continued occupancy for the purposes and uses for which the premises are leased, this lease shall, as to the part so taken, terminate as of the date that possession of such part is taken, and the minimum rent shall be reduced in the same proportion that the floor area of the portion of the premises so taken (less any additions to premises by reconstruction) bears to the original floor area of the premises. PORT shall, at its own cost and expense, make all necessary

repairs or alterations to the building in which the premises are located so as to constitute the portion of the building not taken a complete architectural unit and the remaining premises a complete operating unit. There shall be no abatement of rent during such restoration except to the extent otherwise provided herein.

(c) All compensation awarded or paid upon a total or partial taking of the fee title shall belong to the PORT, whether such compensation be awarded or paid as compensation for diminution in value of the leasehold or of the fee; provided, however, that PORT shall not be entitled to any award made to TENANT for loss of business or unamortized improvements and depreciation to and costs of removal of stock and fixtures.

(d) TENANT shall have the right to claim against the condemnor any other value attributable to the demised premises, including but not limited to TENANT's trade fixtures, any removable structures and improvements made by TENANT to or upon the leased premises if title is in TENANT, and the value of TENANT's leasehold interest, over and above the amount paid to PORT.

22. Maintenance by Tenant. Title to the real property, substructure, and all buildings and improvements located thereon, are in PORT. The term "improvements" shall include all trade fixtures where title has vested in PORT, but shall exclude trade fixtures where title has not vested in PORT and where removal may be had without structural injury to the premises. Despite the fact that title is in PORT, PORT shall have no obligation to maintain either the

substructure or the leased premises or any part thereof including utility service within the leased premises. If, however, the substructure is damaged by fire, acts of war, or acts of God, or any other cause other than wear and tear or deterioration, TENANT will not be required to replace or repair the substructure. If the damage to the substructure for which TENANT has no responsibility for repair hereunder substantially affects TENANT's use, and PORT does not elect to repair, this lease may be cancelled at the option of either party. If, however, PORT does elect to repair, the lease will be continued but rent will be abated to the extent, and during the period, TENANT's use is affected. In the event of damage to the substructure of the improvements by ordinary wear and tear or deterioration, or, if improvements do not meet the standard of maintenance required by PORT for such uses as TENANT is making of the leased premises, then, in that event, TENANT shall promptly undertake such maintenance or repair and complete the same with due diligence. PORT will make periodic inspections of the premises and will advise TENANT when maintenance or repair of either the substructure or the improvements is required. TENANT shall thereupon promptly undertake such maintenance or repair and complete the same with due diligence. If TENANT fails to do so after reasonable notice in writing from PORT, PORT in addition to the remedies it has hereunder, may make such maintenance or repairs and TENANT shall reimburse PORT therefor. Nothing contained herein, however, shall require either TENANT or PORT to repair or replace the improvements as a result of damages caused by acts of war, earthquake,

tidal wave, or other acts of God, except that this provision shall not affect the obligations of TENANT to make repair to improvements for damages required to be covered by insurance by TENANT under paragraph 17 hereof. In the event of damages in this category, TENANT's obligations shall be as set forth in paragraph 17.

In the case of damage by third persons, the party receiving such reimbursement shall devote such reimbursement to the repairs. If reimbursement for damage by third persons is made by TENANT, TENANT shall deposit the proceeds and use the funds in the same manner as required in paragraph 17 hereof. PORT does not warrant that either the substructure or the improvements will last during the term of this lease and TENANT takes this lease with knowledge that it must throughout the entire term of this lease repair, replace, maintain, and rebuild said substructure.

On termination of this lease, the premises, including the substructure, must be usable and in substantially as good condition as when the premises were first tendered to TENANT hereunder after adjustment is made for normal deterioration over the term. If TENANT fails to leave the premises or substructure in such condition, PORT may make such repairs or replacements and TENANT shall pay the cost therefor. Nothing herein contained shall relieve TENANT of its obligation to submit plans to the Chief Engineer of PORT and obtain approval therefore or to obtain such other permits from governmental bodies as may be required.

23. Nondiscrimination Provisions.

Nondiscrimination provisions attached hereto are made a part hereof. Where the term "contractor" is used therein it shall be deemed to mean "tenant."

24. Waiver of Breach. The waiver by PORT of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition with respect to any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by PORT shall not be deemed to be a waiver of any term, covenant or condition of this lease, other than the failure of TENANT to pay the particular rental so accepted, regardless of PORT's knowledge of such preceding breach at the time of acceptance of such rent. No act or omission by either the PORT or TENANT shall constitute a modification of this lease, it being understood by all parties that this lease may be changed or otherwise modified only by written agreement of all parties.

25. Successors. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

26. Modification of Lease. Whenever it appears to be in the public interest, the parties hereto, by mutual agreement in writing, may alter or modify the terms of this lease, or may terminate the same with such adjustments and lease, or may terminate the same with such adjustments and

for such considerations as may be fair and equitable in the circumstances.

27. Holding Over. Any holding over after the expiration of the term of this lease shall be deemed a month-to-month tenancy and upon each and every one of the terms, conditions and covenants of the within lease. In the event of a month-to-month tenancy, PORT may cancel the same upon thirty (30) days' notice left at the leased premises, and TENANT shall have the privilege of cancelling the same upon thirty (30) days' notice to PORT, all notices to be in writing.

28. Quit Claim. TENANT will, upon expiration or earlier termination of this lease, peaceably and quietly leave, surrender and yield up to PORT, all and singular, the leased premises, and, if requested, execute and deliver to PORT a good and sufficient quit claim deed to the rights arising hereunder. Should TENANT fail or refuse to deliver to PORT a quit claim deed, as aforesaid, a written notice by PORT reciting the failure or refusal of TENANT to execute and deliver said quit claim deed as herein provided, shall from the date of recordation of said notice be conclusive evidence against TENANT and all persons claiming under TENANT, of the termination of this lease.

29. Mineral Reservation. The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the leased premises. In accordance with the provision of that Statute, the PORT shall and hereby does grant to the

State of California the right to explore and drill for and extract said subsurface minerals, including oil and gas deposits, from an area located by the California Grid System, Zone 3, beginning at a point where x equals 1,452,333 and y equals 481,666 which area was not improved on January 1, 1975.

30. Notices. All notices to be given pursuant to this lease shall be addressed, if to PORT to:

Commercial Property Manager
San Francisco Port Commission
Ferry Building
San Francisco, California 94111

and if to TENANT to:

Frank Pompei
c/o. Frank Pompei's Grotto
349 Jefferson Street
San Francisco, California 94133

or as may from time to time otherwise be directed in writing by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapped, addressed as aforesaid and deposited, postage prepaid, in a post office or branch post office regularly maintained by the United States Government.

31. Time is of Essence. Time is of the essence of this lease.

32. Captions. The captions in this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the terms and provision of this lease.

IN WITNESS WHEREOF, the PORT and the TENANT have --
executed this lease on this 12th day of March,
1975, in the City and County of San Francisco.

CITY AND COUNTY OF SAN FRANCISCO
a municipal corporation, operating
through the SAN FRANCISCO PORT
COMMISSION,

By /s/ Thomas T. Soules

PORT

POMPEI ENTERPRISES CORPORATION

By /s/ Frank Pompel, Pres.

TENANT

APPROVED AS TO FORM <i>R. H. Babian</i> Chief Counsel San Francisco Port Commission

Description

SWL 302

POMPEI ENTERPRISES CORPORATION

Commencing at the intersection of the monument line of Hyde Street, and the monument line of Jefferson Street; running thence easterly along the monument line of Jefferson Street for a distance of 768.48 feet; thence at a right angle northerly for a distance of 41.875 feet to the true point of beginning; thence continuing on the last aforesaid course for a distance of 74.00 feet; thence at a right angle easterly for a distance of 26.10 feet; thence at a right angle northerly for a distance of 18.00 feet; thence at a right angle easterly for a distance of 26.75 feet; thence at a right angle southerly for a distance of 59.00 feet; thence at a right angle westerly for a distance of 7.63 feet; thence at a right angle southerly for a distance of 33.00 feet; thence at a right angle westerly for a distance of 45.22 feet to the true point of beginning, and containing 4140 square feet of area, more or less.

Sheet 1 of 2
See Dwg. No. 8724-302-6
4-24-75.

EXHIBIT A

Lease file

Description

SWL 302

POMPEI ENTERPRISES CORPORATION

Commencing at the intersection of the monument line of Hyde Street, and the monument line of Jefferson Street; running thence easterly along the monument line of Jefferson Street for a distance of 768.48 feet; thence at a right angle northerly for a distance of 41.875 feet to the true point of beginning; thence continuing on the last aforesaid course for a distance of 74.00 feet; thence at a right angle easterly for a distance of 26.10 feet; thence at a right angle northerly for a distance of 18.00 feet; thence at a right angle easterly for a distance of 26.75 feet; thence at a right angle southerly for a distance of 59.00 feet; thence at a right angle westerly for a distance of 7.63 feet; thence at a right angle southerly for a distance of 33.00 feet; thence at a right angle westerly for a distance of 45.22 feet to the true point of beginning, and containing 4140 square feet of area, more or less.

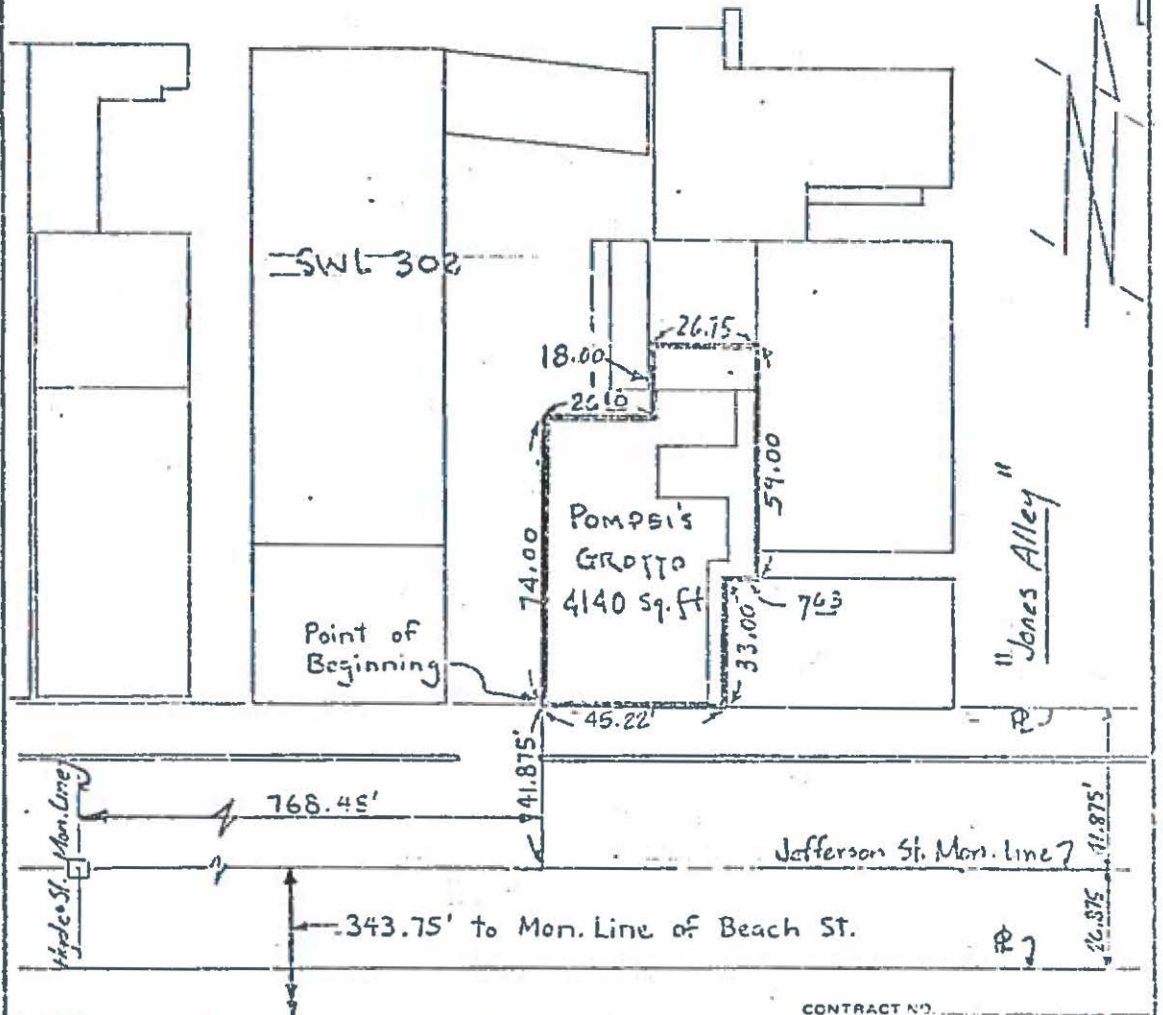
Sheet 1 of 2
See Dwg. No. 8724-302-6
4-24-75.

EXHIBIT A

San Francisco Bay

EXHIBIT A

Edge of Decking



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING		CONTRACT NO.	
IN CHARGE OF <i>SN</i>		DRAWING NO. 8724-302-6	
DATE BY <i>GAN</i>		SHEET NO. 2 OF 2	
TRACED BY <i>GAN</i>		DATE 4/24/75	
CHECK BY		SCALE 1"=40'	
SWL 302 POMPEI'S GROTTA Description		APPROVED DATE	