

File No. 230619

Committee Item No. 7

Board Item No. 51

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date July 19, 2023

Board of Supervisors Meeting Date July 25, 2023

Cmte Board

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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Original Lease 9/8/2020</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Executed Agrmt L-8986 3/12/1975</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Executed Port License No. E-13772 2/17/2005</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Commission Resolution No. 23-18 4/25/2023</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Staff Report 4/21/23</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PRT Presentation 7/19/2023</u> |
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Completed by: Brent Jalipa Date July 14, 2023

Completed by: Brent Jalipa Date July 20, 2023

1 [Mutual Termination Agreement of Real Property - 340 Jefferson Street - 340 Jefferson, LLC
2 dba Pompei's Grotto]

3 **Resolution authorizing the Executive Director of the Port of San Francisco to execute a**
4 **Mutual Termination Agreement for Port Lease No. L-8969 and Port License No. E-13772**
5 **between the Port of San Francisco and 340 Jefferson, LLC dba Pompei's Grotto, for the**
6 **restaurant premises and the associated front patio located at 340 Jefferson Street; and**
7 **to authorize the Executive Director of the Port of San Francisco to enter into**
8 **amendments or modifications to the Mutual Termination Agreement that do not**
9 **materially increase the obligations or liabilities to the City and are necessary to**
10 **effectuate the purposes of this Resolution.**

11
12 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,
13 Sections 4.114 and B3.581, empower the Port Commission with the power and duty to use,
14 conduct, operate, maintain, manage, regulate and control the Port area of the City and County
15 of San Francisco; and

16 WHEREAS, 340 Jefferson, LLC dba Pompei's Grotto, a California limited liability
17 company, ("Tenant") is the current tenant under Port Lease L-8986 ("Lease") and the licensee
18 under License No. E-13772 ("License") for the premises known as Pompei's Grotto located at
19 340 Jefferson Street, SWL 302, including the fronting patio; and

20 WHEREAS, The term of Port Lease No. L-8986 is 61 years and 20 days, commencing
21 April 1, 1975, and expiring April 20, 2036; and

22 WHEREAS, The Port License No. E-13772 commenced March 1, 2005, and shall
23 continue until revoked by either party on 24-hour written notice, and

24 WHEREAS, The Port and the Tenant now wish to agree on an orderly termination of
25 Port Lease No. L-8986 and Port License No. E-13772, per the terms of the Mutual

1 Termination Agreement on file with the Clerk of the Board of Supervisors (the "Mutual
2 Termination Agreement"); and

3 WHEREAS, The Mutual Termination Agreement requires payment of lease termination
4 fees by the Tenant, the surrender of security deposits to the Port, transfer of fixtures and
5 equipment to the Port and other agreements, including indemnities and the release of claims,
6 and wind down of the lease relationship; and

7 WHEREAS, On April 25, 2023, through Resolution No. 23-18, the Port Commission
8 approved the Mutual Termination Agreement; and authorized the Executive Director or her
9 designee to execute it, and

10 WHEREAS, Charter, Section 9.118, requires Board of Supervisors' approval of the
11 termination of any lease which when entered into was for a period of ten or more years or
12 having anticipated revenue to the City of one million dollars or more; now, therefore, be it

13 RESOLVED, That the Board of Supervisors approves the Mutual Termination
14 Agreement and authorizes the Port Executive Director or her designee to execute the Mutual
15 Termination Agreement of Port Lease No. L-8986 and Port License No. E-13772 between the
16 Port of San Francisco and the Tenant; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors approves the proposed
18 Mutual Termination Agreement and authorizes the Executive Director of the Port or her
19 designee to execute such Mutual Termination Agreement in substantially the same form as
20 the Mutual Termination Agreement on file with the Clerk of the Board of Supervisors in File
21 No. 230619; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
23 Director to enter into any additions, amendments or other modifications to the Mutual
24 Termination Agreement that the Executive Director, in consultation with the City Attorney,
25 determines, when taken as a whole, to be in the best interest of the Port, do not materially

1 increase the obligations or liabilities of the City or the Port, and are necessary or advisable to
2 complete the transaction which this Resolution contemplates and effectuate the purpose and
3 intent of this Resolution, such determination to be conclusively evidenced by the execution
4 and delivery by the Executive Director of such documents; and, be it

5 FURTHER RESOLVED, That within thirty (30) days of the Mutual Termination
6 Agreement being fully executed by all parties, the Port shall provide a copy of the Mutual
7 Termination Agreement to the Clerk of the Board for inclusion into the official file.

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<p>Items 6 & 7 Files 23-0618, 23-0619</p>	<p>Department: Port Commission (Port)</p>
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolutions would approve mutual termination agreements between the Port of San Francisco (Port) and (1) D&G Company dba Lou’s Pier 47 (File 23-0618) and (2) 340 Jefferson, LLC dba Pompei’s Grotto (File 23-0619), and authorize the Port’s Executive Director to enter into modifications to the mutual termination agreements that do not materially increase the obligations or liability of the City.

Key Points

- Lou’s Pier 47 and Pompei’s Grotto have operated as restaurants on Jefferson Street on Port property since 1977 and 1946, respectively. Due to the COVID-19 pandemic, Lou’s Pier 47 and Pompei’s Grotto ceased operations in March 2020 and have not reopened. As of February 15, 2023, Lou’s Pier 47 owed \$514,346 in past due rent and interest and Pompei’s Grotto owed \$494,761 (net of security and environmental clearance deposits).
- The Port has negotiated mutual termination agreements with Lou’s Pier 47 and Pompei’s Grotto to settle past due rent and quickly regain the premises without litigation. According to Port staff, both properties are in relatively good condition and new tenants would be able to begin operations with minimal repairs or improvements. As part of the mutual termination agreements, the tenants agreed to pay for the Port’s cost to board up broken windows and doors and the removal of exterior signage. Lou’s Pier 47 repaired its broken elevator and removed utilities and access to the neighboring Crab Boat Owner’s Association (CBOA) premises, which the restaurants had used for storage. Pompei’s Grotto agreed to indemnify the Port for claims related to past due loans. The Port would begin seeking new tenants for the premises immediately after approval of the proposed mutual termination agreements.

Fiscal Impact

- Under the proposed mutual termination agreements, Lou’s Pier 47 would pay a \$200,000 termination fee in exchange for \$514,346 in waived rent and interest, and Pompei’s Grotto would pay a \$150,000 termination fee in exchange for \$494,761 in waived rent and interest. The net cost to the Port between the two lease terminations would be \$659,107.
- Pompei’s Grotto has also agreed to transfer its personal property to the Port, which it estimates to be valued at \$122,000. The Budget and Legislative Analyst is unable to validate that estimate.

Recommendation

- Approve the proposed resolutions.

MANDATE STATEMENT

City Charter Section 9.118(c) states that (1) any lease of real property for ten or more years, including options to renew, or having anticipated revenues to the City of \$1,000,000, or (2) the modification, amendment, or termination of these leases is subject to Board of Supervisors approval.

BACKGROUND

Lou’s Pier 47

Lou’s Pier 47 has operated as a restaurant on Port of San Francisco (Port) property at 300 Jefferson Street since 1977, first as the Sports Fishing Center, and subsequently as Lou’s Blues. In 1997, Lou’s Blues declared bankruptcy and the lease was sold at Bankruptcy Court auction to Lou’s Pier 47. In 2010, the Board of Supervisors approved a new lease with Lou’s Pier 47 for a term of 15 years and six months, from July 2010 through December 2025, with a five-year option to extend through December 2030. Also in 2010, the Port issued a license for non-exclusive sidewalk use through December 2030.

Pompei’s Grotto

Pompei’s Grotto has operated as a restaurant on Port property at 340 Jefferson Street since 1946. In 1975, the Port entered into a 61-year lease with Pompei Enterprises Corporation to operate a restaurant and entertainment venue on the premises. In 2005, the Port entered into a companion Sidewalk Encroachment Permit Revocable License for the plaza in front of the restaurant. In June 2015, the Port approved the assignment of the lease and license to 340 Jefferson, LLC. Pompei Grotto’s lease expires on April 20, 2036.

COVID-19 Pandemic

Due to the COVID-19 pandemic, Lou’s Pier 47 and Pompei’s Grotto ceased operations in March 2020 and have not reopened. As of February 15, 2023, Lou’s Pier 47 owed \$514,346 in past due rent and interest and Pompei’s Grotto owed \$494,761 (net of security and environmental clearance deposits). Because neither restaurant reopened, they were not eligible for the Port’s COVID-19 Rent Relief Program. After inspecting the premises, Port staff negotiated mutual termination agreements with the two tenants. In April 2023, the Port Commission approved the mutual termination agreements.

DETAILS OF PROPOSED LEGISLATION

The proposed resolutions would approve mutual termination agreements for leases and licenses between the Port and (1) D&G Company dba Lou’s Pier 47 (File 23-0618) and (2) 340 Jefferson, LLC dba Pompei’s Grotto (File 23-0619), and authorize the Port’s Executive Director to enter into modifications to the mutual termination agreements that do not materially increase the obligations or liability of the City.

Under the mutual termination agreements, the Port would receive termination fees of \$200,000 from Lou’s Pier 47 and \$150,000 from Pompei’s Grotto in exchange for waiving all unpaid rent

and interest. According to Don Kavanagh, Port Senior Property Manager, the owner of Pompei’s Grotto initially refused to provide a termination fee, but after threats of litigation, Pompei’s agreed to pay \$150,000. The Port would also receive all personal property in the restaurant (such as furniture and kitchen equipment), which Pompei’s Grotto estimated to be valued at \$122,000.¹ Port management believes that the mutual termination option is the best path forward for each property, as it avoids the costs, risks, and time of litigation and allows the Port to regain the premises quickly to seek new tenants.

According to Senior Property Manager Kavanagh, both properties are in relatively good condition and new tenants would be able to begin operations with minimal repairs or improvements. As part of the mutual termination agreements, the tenants agreed to pay for the Port’s cost to board up broken windows and doors and the removal of exterior signage. Lou’s Pier 47 repaired its broken elevator and removed utilities and access to the neighboring Crab Boat Owner’s Association (CBOA) premises, which the restaurants had used for storage. For Pompei’s Grotto, the tenant agreed to indemnify the Port for any claims related to the Paycheck Protection Act and other emergency loans to prevent the Small Business Administration from placing liens on the property. The key terms of the mutual termination agreements are shown in Exhibit 1 below.

Exhibit 1: Key Terms of Mutual Termination Agreements

	Lou’s Pier 47 (File 23-0618)	Pompei’s Grotto (File 23-0619)
Termination Fee	\$200,000	\$150,000
Rent Waived (As of February 2023)	\$514,346	\$494,761
Personal Property	To remain on premises and transferred to Port via Bill of Sale	
Conditions of Surrender	Tenant must replace broken windows and doors and maintain property until final Termination Date	
Board-Up Costs	\$7,676	\$2,800
Exterior Signage	Tenant must remove or pay \$3,500 disposal fee to Port	
CBOA Space	Tenant must remove utilities connection and access to CBOA space	
Indemnity	N/A	Tenant must indemnify Port for claims related to Paycheck Protection Act and other emergency loans

Source: Proposed Mutual Termination Agreements

According to Senior Property Manager Kavanagh, the Port would begin seeking new tenants for the premises immediately after approval of the proposed mutual termination agreements.

¹ The Lou’s Pier 47 termination agreement also included the transfer of personal property to the Port, but it was not considered a material contribution from the tenant.

FISCAL IMPACT

Under the proposed mutual termination agreements, Lou’s Pier 47 would pay a \$200,000 termination fee in exchange for \$514,346 in waived rent and interest, and Pompei’s Grotto would pay a \$150,000 termination fee in exchange for \$494,761 in waived rent and interest. The net cost to the Port between the two lease terminations would be \$659,107, as shown in Exhibit 2 below.

Exhibit 2: Fiscal Impact to Port from Mutual Termination Agreements

	Lou’s Pier 47 (File 23-0618)	Pompei’s Grotto (File 23-0619)	Total
Termination Fee	\$200,000	\$150,000	\$350,000
Waived Rent	(514,346)	(494,761)	(1,009,107)
Net Cost to Port	(\$314,346)	(\$344,761)	(\$659,107)

Source: Proposed Mutual Termination Agreements

In addition to the \$150,000 termination fee, Pompei’s Grotto has agreed to transfer its personal property to the Port, which it estimates to be valued at \$122,000. The Budget and Legislative Analyst is unable to validate this estimate. Lou’s Pier 47 performed a major renovation in 2012 with an estimated cost of over \$1 million. These improvements and property transfers may assist the Port in marketing the spaces to new tenants for greater or faster revenue generation.

POLICY CONSIDERATION

According to Port management, mutual termination agreements are beneficial because the Port recovers a portion of the rent due and obtains possession of the properties faster and with greater certainty and less cost than pursuing an unlawful detainer action, from which the Port could only recover 12 months of unpaid rent. The mutual termination option also avoids the potential of the tenant declaring bankruptcy, which may result in little to no recovery of past due rent. According to Senior Property Manager Kavanagh, these properties are ready for new tenants with minimal repairs and improvements.

In June 2022, the Board of Supervisors approved a mutual termination agreement between the Port and Alioto Fish Company (File 22-0438). Alioto paid a \$250,000 termination fee and forfeited a \$25,975 security deposit in exchange for the Port waiving \$861,427 in unpaid rent and late fees. As of this writing, the space has not been leased. Because the proposed resolutions are similar to recent Board of Supervisors action, the Budget and Legislative Analyst recommends approval.

RECOMMENDATION

Approve the proposed resolutions.

Mutual Termination Agreements:

D & G Company, LLC dba Lou's Pier 47

340 Jefferson, LLC dba Pompei's Grotto

Presentation

July 19, 2023

Presented by:

Don Kavanagh

Senior Property Manager - Port of San Francisco





Background

Both Lou's Pier 47 and Pompei's Grotto stopped paying rent on March 1, 2020, due to the devastating financial impacts of the COVID pandemic. Neither was willing to invest more money in the restaurants to reopen.

As of November 30, 2022, Lou's Pier 47 owes the Port \$507,765 (after application of deposits to the balance due) in past due rent and interest.



As of March 17, 2023, Pompei's Grotto owes Port \$523,464.23 (after application of deposits to the balance due) in past due rent and interest.

Both Tenants approached the Port to terminate their respective leases and licenses. After extensive negotiations Port agreed to terminate the leases and licenses under the term on the following slide.

Proposed Mutual Termination Agreement Terms

Lou's Pier 47: Port staff propose to enter into a Mutual Termination Agreement for Lease L-14630 and License 14651 on the following terms:

1. Tenant to pay Port a lump-sum \$200,000 termination fee and \$11,176 to reimburse Port for board up and sign removal costs.
2. Specified personal property, including fixtures and furnishings, will be transferred to Port, leaving the property in almost turn-key condition for the next tenant.

Pompei's Grotto: Port staff propose to enter into a Mutual Termination Agreement for Lease L-14630 and License 14651 Port staff on the following terms:

1. Tenant to pay Port a lump-sum \$150,000 termination fee and \$6,300 to reimburse Port for board up and sign removal costs.
2. Specified personal property, including fixtures and furnishings, will be transferred to Port. Tenant's unverified value of the FF&E is \$122,000. Retention of the fixtures and furnishings will leave the property in almost turn-key condition for the next tenant.

Port to write-off remaining rent balance and interest/late fees due for both restaurants

Port Staff Analysis

Port will receive a \$200,000 termination fee plus \$11,176 for board-up and sign removal costs from Lous Pier 47.

Port will receive a \$150,000 from Pompei's Grotto fee plus \$6,300 for board-up and sign removal costs.

Mutual Termination of the agreements will allow the Port to immediately begin to remarket the restaurants for lease. Retaining the fixtures and equipment is integral to a rapid lease up

Mutual termination agreements are beneficial because the Port recovers a portion of the rent due and obtains possession of the properties faster and with greater certainty and less cost than pursuing an unlawful detainer action, from which the Port could only recover 12 months of unpaid rent.

The terms for the Mutual Terminations are generally consistent with other termination agreements that Port has agreed to.

**MUTUAL TERMINATION AGREEMENT FOR
LEASE NO. L-8986 and SIDEWALK ENCROACHMENT PERMIT REVOCABLE
LICENSE NO. E-13772**

This Mutual Termination Agreement (“**Agreement**”), dated for reference purposes as of _____, 2023, is made and entered into by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the “**Port**”) and 340 Jefferson, LLC, a California limited liability company, dba Pompei’s Grotto (“**Tenant**”), and, solely as to **Section 9(b)** below, Garrett Meyers (“**Meyers**”), hereinafter, the “**Parties**”.

RECITALS

A. Port and Tenant’s predecessor in interest, Pompei Enterprises Corporation, a California corporation (“**Original Tenant**”), entered into Port Lease No. L-8986 dated as of March 12, 1975, as assigned to Tenant pursuant to that certain Asset Purchase Agreement dated May 22, 2015 (the “**Asset Purchase Agreement**”), which assignment was consented to by the Port pursuant to that certain Consent to Assignment dated June 16, 2015 (as assigned, the “**Lease**”) for that certain real property located at 340 Jefferson Street, consisting of approximately 4,140 rentable square feet of restaurant space in the City and County of San Francisco, State of California (the “**Premises**”), for a sixty-one year term, as more particularly described in the Lease. The Lease commenced on April 1, 1975 and expires April 20, 2036. Original Tenant and Port also entered into that certain Sidewalk Encroachment Permit Revocable License No. E-13772, as assigned to Tenant pursuant to the Asset Purchase Agreement, which assignment was consented to by the Port pursuant to that certain Consent to Assignment dated June 16, 2015 (as assigned, the “**License**”) for a sidewalk café, crab stand, and associated service adjacent to the Premises as further described in the License (the “**License Area**”). The License commenced on February 17, 2005 and can be terminated on 24-hours written notice from either Party.

B. Tenant has requested early termination of the Lease and has provided notice to Port of its intent to terminate the License as of the same date the Lease terminates. Port is willing to terminate the Lease and License upon the terms and conditions provided in this Agreement.

C. While not making any concessions on any underlying issues or potential disputes or making any admissions of any kind, the Parties now wish to cooperatively terminate the Lease and License and resolve claims, as further described in this Agreement. Each of the Parties have determined that entering this Agreement is in their respective best interests.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the Parties hereby agree as follows:

AGREEMENT

- 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
- 2. Definitions.** All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Lease.
- 3. Effective Date; Termination Date.**

(a) This Agreement is subject to the approval of the Port Commission and the Board of Supervisors, each in its sole discretion. Notwithstanding anything to the contrary contained in this Agreement, Tenant acknowledges and agrees any obligations or liabilities of Port or City under this Agreement are contingent upon duly adopted resolutions of the Port Commission and the Board of Supervisors approving this Agreement, each in its sole discretion,

and this Agreement will never become effective and will be null and void if such approval bodies do not approve this Agreement.

(b) The Parties agree that Port has no obligation to present this Agreement to the Port Commission for its consideration until and unless all of the following conditions are satisfied:

(i) Tenant has delivered to Port its counterpart original executed signatures to this Agreement;

(ii) Tenant has delivered to Port an executed estoppel certificate for the Lease and License as further described in *Section 6(l)*;

(iii) Tenant has delivered to Port an executed Bill of Sale for the Personal Property (each as defined below) in the Premises as further described in *Section 6(d)*;

(iv) Tenant has surrendered the Premises to Port in accordance with the provisions of *Section 5.1*; and

(v) Tenant has delivered to Port a cashier's check payable to Port in an amount equal to the Termination Fee described in *Section 6(a)*, Board-Up Costs described in *Section 6(b)*, and, if applicable, the Signage Fee described in *Section 6(c)*, which cashier's check Port shall hold and not deposit until the Effective Date.

Upon satisfaction of each of the foregoing requirements, Port staff will use commercially reasonable efforts to calendar this Agreement for the next regularly scheduled Port Commission meeting for Port Commission consideration of this Agreement and, upon approval of this Agreement by the Port Commission, Port staff will use commercially reasonable efforts to calendar this Agreement for Board of Supervisors consideration, at the Committee and Board levels (as appropriate), as soon as practicable.

(c) The "Effective Date" of this Agreement is the date of Port's signature as indicated in the Port's signature block below, which date must be after Port Commission and Board of Supervisors approval of this Agreement, each in its sole discretion.

(d) If the Board of Supervisors does not approve this Agreement, or if the Mayor vetoes the Board's approval, and that veto is not overridden by the Board as provided by law, within the timeframes set forth in *Section 3(f)*, the Termination Fee shall be returned to Tenant in full without any claim or right of offset by Port within seven business days of the Outside Date.

(e) The final termination date of the Lease and License ("Termination Date") is the latest date (i) Port cashes the Termination Fee, the Board-Up Costs and, if applicable, the Signage Disposal Fee, and (ii) Tenant satisfies all the conditions to termination of the Lease described in *Section 6* and is otherwise in compliance with the terms and conditions of this Agreement. Promptly following the Termination Date, Port and Tenant shall execute a countersigned memorandum confirming the Termination Date, but either Party's failure to do so shall not affect the termination of the Lease and License.

(f) Unless extended by mutual written agreement of the Parties, if a Resolution of the Board of Supervisors approving this Agreement (the "Approval Resolution") is not adopted on or before October 31, 2023 (the "Outside Date"), or if the Mayor vetoes the Approval Resolution within ten days after the Outside Date, and the Mayor's veto is not overridden by the Board in the timeframe allowed by law, this Agreement is null and void and the Parties will have no obligation to continue negotiations or change the terms of this Agreement as was presented to the Board of Supervisors to address issues and concerns raised by the Board. The Parties, however, may by mutual written agreement extend the Outside Date.

4. Outstanding Rent.

4.1. As of March 17, 2023, Tenant owes Port \$523,464.23 in past due rent. Provided Tenant complies with all the terms and conditions of this Agreement as of the Termination Date, including without limitation, the payment to Port, conveyance to Port of Tenant's Personal Property via Bill of Sale as described in **Section 6(d)**, surrender condition of the Premises, and Tenant's release of Port, all as described in this Agreement, Port agrees to waive all outstanding rent due and remaining as of the Termination Date after application of the security deposit and Termination Fee (the "Waived Amount").

4.2. If Tenant fails to timely comply with all the terms and conditions of this Agreement, then Port's waiver of the Waived Amount as of the Termination Date will be null and void, all rent will continue to accrue after the Termination Date, and Port will have all remedies available under the Lease and License and under law to pursue any outstanding rent and any other defaults of Tenant under the Lease and License. For the avoidance of doubt, if Tenant fails to timely comply with all the terms and conditions of this Agreement, then Port may pursue all remedies at equity or law including, but not limited to, unlawful detainer and civil litigation.

5. Surrender Condition of the Premises.

5.1. No later than the Termination Date, Tenant will surrender the Premises broom clean, free of debris, waste, and Hazardous Materials (including but not limited to the removal and disposal of all waste, bottles, perishables, condiments, and any other items not listed on the attached **Schedule 1**), and free and clear of all liens and encumbrances other than liens and encumbrances created by Port and as otherwise required in the Lease and the License Area, provided, that Tenant will have the additional obligations related to certain of Tenant's Personal Property, as further described in **Sections 5.3** and **6(d)**. On or before the Termination Date, Tenant will also remove and dispose of all signage in and around the Premises and License Area related to its business or pay Port the Disposal Fee, all as described in **Section 7**. Tenant will promptly repair any damage to the Premises, the License Area, or any other area or property for which Tenant is liable under the Lease or License, including but not limited to replacing any broken windows and glass and broken or inoperable doors. At mutually agreeable times prior to the Termination Date and as close as possible to the Termination Date, the Parties will conduct a joint inspection of the Premises and the License Area to review the surrender condition of each of the Premises and the License Area to identify any and all conditions of the Premises which do not meet the requirements of this Section.

5.2. As of the Effective Date and as of the Termination Date, to the actual knowledge of each of the undersigned signing on behalf of Tenant, there are no material conditions at the restaurant facility that require repair.

5.3. Any items, including Tenant's other personal property not listed on **Schedule 1** to the Bill of Sale described in **Section 6(d)** that remain at the Premises or the License Area as of the Termination Date shall be deemed sold to the Port pursuant to the Bill of Sale. Port may retain, store, remove, and sell or otherwise dispose of any such personal property remaining on the Premises, and Tenant's waiver of all claims in **Section 8** includes claims against Port for any damages resulting from Port's retention, removal and disposition of such personal property. Tenant agrees that Port may elect to sell Tenant's personal property remaining on the Premises and retain any revenues therefrom without notice to Tenant and without compliance with the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.

6. Conditions to Termination of Lease. Tenant shall comply with the following terms as material consideration for this Agreement and as a condition precedent for any Port obligation under this Agreement:

(a) Application of Security Deposit and Termination Fee. In addition to the prior application by Port of the security deposit in the amount of \$9,634.22 for past due rent, Tenant shall pay to Port on or before the Effective Date, One Hundred Fifty Thousand Dollars (\$150,000.00) as a termination fee for the early termination of the Lease and partial payment of outstanding rent (“**Termination Fee**”).

(b) Payment for Boarding Up Front Door Alcove. In addition to the payment of the Termination Fee, Tenant will pay Port on or before the Effective Date, \$2,800.00 for the cost of Port boarding up the front door alcove on the ground floor of the Premises (the “**Board-Up Costs**”). Tenant agrees and acknowledges that it provided Port its approval of the cost and work. Tenant also delivered to Port keys to the Premises for the convenience of the Parties so that Port could have convenient access to the Premises for performing the work and for inspection purposes as explicitly allowed by the Lease. The Parties agree and acknowledge that Tenant providing keys to the Premises to Port did not and does not constitute a surrender of the Premises by Tenant to Port.

(c) Removal of Signage or Payment of Signage Disposal Fee and Surrender Condition. On or before the Termination Date, Tenant will remove all signage or pay Port the Signage Disposal Fee, as described in *Section 7*. As of the Termination Date, Tenant will surrender the Premises and the License Area in the condition described in *Section 5*.

(d) Conveyance of Tenant’s Personal Property and Bill of Sale. On or before the Termination Date, Tenant will (i) transfer by bill of sale to Port title to all personal property owned by Tenant and located on or in the Premises and the License Area and as generally described in the *Schedule 1* (the “**Personal Property**”) attached to the bill of sale, the form of which is attached hereto as *Exhibit A* (the “**Bill of Sale**”), and (ii) deliver to Port a Certificate from the Secretary of State or other appropriate government official of the State of California indicating that, as of the Termination Date, there are no filings against Tenant in the office of the Secretary of State or other government official under the Uniform Commercial Code of such State which would be a lien on any of the items specified in the Bill of Sale. Tenant will also assign to Port any rights to any pre-paid warranty or pre-paid maintenance contracts relating to the same.

(e) Crab Boat Owners Association Space. Crab Boat Owners Association, a California non-profit corporation (“**CBOA**”) and Port are parties to that certain lease agreement Lease No L-12169 dated for reference purposes only as of September 1, 1996 (the “**CBOA Lease**”) for property in the vicinity of the Premises and as further described in the CBOA Lease (the “**CBOA Premises**”). At some point prior to 2020, without Port’s knowledge or consent, CBOA and Tenant entered into an agreement pursuant to which Tenant occupied a portion of the CBOA premises for storage use. On or before the Termination Date, Tenant will remove the door providing access to storage space in the adjacent Crab Boat Owners Association premises and replace it with material consistent with adjacent wall so that the door is permanently removed. In addition, Tenant will deliver to Port on or before the Termination Date evidence of CBOA’s agreement and acknowledgement that as of the Termination Date (or sooner), CBOA is fully responsible for the storage space in the CBOA Premises.

(f) [Replace Broken Windows and Doors. On or before the Termination Date, Tenant will replace all broken windows/glass and repair and/or replace any broken or inoperable doors at and within the Premises.]

(g) Third Party Payments. Tenant shall be responsible for all services provided to the Premises by all contractors, third party vendors and utility providers for which Tenant is legally obligated under either the Lease or the License until the Termination Date.

(h) Government Loans. Tenant represents and warrants to Port that (i) it has returned the full amount of a \$220,015 loan from the Small Business Administration backed Paycheck Protection Program (“**PPP Loan #1**”), (ii) it is paying principal and interest on and will

repay in full a loan from the Small Business Administration backed Paycheck Protection Program with a face value of \$308,024.00 and a balance of \$262,291.72 as of February 22, 2023 (“PPP Loan #2”), which PPP Loan #2 will be repaid in full on or before February 22, 2026, and (iii) it is paying interest on and will repay in full the \$150,000 (face value) Economic Injury Disaster Loan from the Small Business Administration (the “EIDL Loan”) on or before February 22, 2026, and (iv) it has not received any loans from any other federal, regional, state or local government-funded financial aid, grant or loan program for COVID relief, including, without limitation, the San Francisco Hardship Emergency Loan Program (SFHELP), Port’s Micro-LBE Hardship Emergency Loan Program, or Port’s Crab Fisher Assistance Loan Program that were specifically designated only for payment of rent by the grantor. All such loan funds received by the undersigned, if any, were returned.

(i) **Insurance.** Until the Termination Date, Tenant shall obtain and maintain insurance coverage in the same amounts and types as required in the Lease and License. All liability insurance policies shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**City and County of San Francisco and the San Francisco Port Commission and their Commissioners, Officers, Directors, Employees and Agents,**" shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under the Lease or the License, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability. Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in forms satisfactory to Port using EXIGIS, Port’s internet-based insurance compliance tracking system. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder. Tenant hereby authorizes Port to pursue, and does not object in any way to Port pursuing, any claims allowed pursuant to the insurance policies required to be maintained by Tenant, including, but not limited to, any policies previously maintained by Tenant that were in effect after March 2020.

(j) **Permits.** Tenant will reasonably cooperate as needed to ensure all regulatory permits and ongoing third-party contractual obligations relating to the Lease and License are disclosed and assigned to Port as appropriate. Tenant is not aware of any such regulatory permits affecting the Premises or the License Area.

(k) **Tenant Representations and Warranties.** As of the date of Tenant’s execution of this Agreement and as of the Termination Date, Tenant represents and warrants to Port that:

(i) Tenant has or will have paid for all goods, materials, or services provided by contractors, third party vendors and utility providers for goods, materials, or services provided to each Premises, which are legally due, until the Termination Date;

(ii) Tenant holds only regulatory permits and third-party contracts related to operation of the restaurant and there are no regulatory permits issued by the state or federal government that must be maintained absent restaurant operations;

(iii) Except as to outstanding rent which is subject to dispute between the Parties, failure to operate the Premises in accordance with Section 6 of the Lease, and failure to insure the Premises and the License Area during the Term of the Lease and License, the undersigned is not in default or in breach of the Lease or the License, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease or the License;

(iv) Tenant holds title to the Personal Property free of any liens, encumbrances or interests;

(v) Tenant has returned all federal, regional, state or local government-funded loans for COVID relief it received, if any;

(vi) Tenant did not handle Hazardous Materials at the Premises or in the License Area (except as lawfully stored and maintained in amounts of such substances as are reasonable and customary for Tenant's business), and there is no existing presence, release or threatened release of hazardous materials or environmental contamination on, under or about either Premises or the License Area as of the Termination Date;

(vii) There are no liabilities, claims for damages or suits pending or threatened against Tenant for or by reason of any injury or injuries to any person or persons or property in any way connected with any of the Premises, the License Area, the Lease, or the License; and

(viii) Tenant has repaid all amounts due to Original Tenant under the Note (as defined in Section 2.C of the Asset Purchase Agreement).

Tenant acknowledges and agrees that its representations and warranties in this Agreement are material and made with the intent that Port will fully rely on them in entering this Agreement. From the Effective Date of this Agreement and continuing until the date that is twelve (12) months from the Termination Date, Tenant agrees to notify Port immediately of the occurrence of any event or the discovery of any fact that would make any representation contained in this Agreement inaccurate as of the date made or as of any future date.

(l) Estoppel Certificates. The Parties agree that Port has no obligation to execute this Agreement until Tenant executes and delivers to Port an estoppel certificate in the form attached hereto as *Exhibit B* for the Lease and License. No sooner than three (3) days prior to the actual Termination Date, Tenant must provide an updated estoppel certificate in the form attached hereto as *Exhibit B* for the Lease and License. The obligation to accurately complete the Estoppel Certificate is a condition precedent for Port's performance of all terms under this Agreement. Any misrepresentation or omission by Tenant in the Estoppel Certificate constitutes an unexcused failure to comply with a material condition precedent, regardless of whether the misrepresentation or omission was intentional.

7. Intellectual Property and Removal of Signage. Tenant has no obligation to transfer any intellectual property to Port, including without limitation the name "Pompei's Grotto" ("**Pompei's Name**"). Accordingly, Tenant, at its sole cost and expense, must remove and properly dispose of all branded signage, including any signage with the Pompei's Name, in and around the Premises, and repair the Premises from any damage resulting from such removal and disposal (including paint over any walls and other surfaces using paint color that matches the surrounding or adjacent wall or surface from where the signage was removed) no later than 14-days after the Effective Date. In lieu of the foregoing, Tenant may instead elect to provide Port on or before the Effective Date, a fee equal to \$3,500 for the removal of the signage bearing the Pompei's Name on the Premises (the "**Signage Disposal Fee**"). If signage remains on the Premises as of the Termination Date, then Tenant agrees that such signage will be deemed personal property remaining on the Premises as described in *Section 5.3* and Port may take any and all actions described in such section, including the destruction, disposal, or sale of any signage with Pompei's Name. Tenant further releases any and all Claims related to the use, destruction, disposal or sale of Pompei's Name if any signage bearing Pompei's Name remains on or around the Premises as of the Termination Date.

8. Tenant Release. Provided that the City and the Port comply with the terms and conditions of this Agreement, except with respect to its claims in connection with possessory interest taxes and personal property taxes which claims have not otherwise been waived or expired, to the maximum extent allowed by law, Tenant, in its own capacity and on behalf of its partners, members, officers, employees, owners, successors, and assigns, if any, hereby agrees to fully and forever release and discharge the City and County of San Francisco, together with its elective and/or appointive boards, servants, employees, departments, commissioners, officers, successors, and assigns, including without limitation the San Francisco Port Commission

(c) The provisions of this **Section 9** shall survive the expiration or earlier termination of the Lease.

10. Port Release. Except as expressly provided below and provided that Tenant complies with the terms and conditions of this Agreement, to the maximum extent allowed by law, the City and County of San Francisco in its own capacity and on behalf of its elective and/or appointive boards, servants, employees, departments, commissioners, officers, successors, and assigns, and the San Francisco Port Commission, in its own capacity and on behalf of its commissioners, officers, successors, and assigns, hereby agrees to fully and forever release and discharge Tenant, together with its partners, members, officers, employees, owners, successors, and assigns, if any, from the following Claims which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions set forth or alleged in this Agreement, the Lease, the License or any correspondence or documentation related to this Agreement, the Lease, or the License, each as of the Termination Date: (1) any Claim by Port for outstanding Rent, and (2) subject to the immediately following sentence, any Claim in favor of Port arising under the Lease or the License for which the Port releasors had actual or constructive knowledge (collectively, “Released Claims”) to the extent such loss or damage from a Released Claim is not covered by insurance which was required to be maintained by Tenant under the Lease or the License or is otherwise actually covered by insurance obtained by Tenant. Released Claims do not include Claims filed by Tenant or any Claims related to the CBOA Premises or CBOA Lease; Port/City reserves any and all defenses it may have to Claims filed by Tenant. Notwithstanding anything to the contrary in this Agreement, the Released Claims do not include any claims by Port/City in connection with possessory interest taxes and personal property taxes which claims have not otherwise been waived or expired or claims for payment for utility services provided to the Premises.

11. No Representation or Warranty by Port. Except as explicitly stated herein, nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

12. Rights Are Cumulative. Except as may otherwise be provided herein, all liabilities and the rights and remedies of either party as set forth in this Agreement shall be cumulative and in addition to any and all other rights or remedies of each party now or later allowed by applicable law or in equity.

13. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Tenant under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Agreement.

14. Authority. Each of the persons executing this Agreement on behalf of Tenant hereby covenants and warrants that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Each of the persons executing this Agreement on behalf of the Port hereby covenants and warrants that Port has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Port are authorized to do so.

15. Litigation Expenses. The Prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Agreement shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. “Prevailing party” within the meaning of this Section

shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this Agreement, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

16. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Agreement are superseded in their entirety by this Agreement. No prior drafts of this Agreement or changes between those drafts and the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Agreement.

17. Miscellaneous. This Agreement shall bind, and shall inure to the benefit of, the successors and assigns of the Parties hereto. This Agreement is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third-party beneficiary of otherwise. This Agreement may be executed in counterparts with the same force and effect as if the Parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Agreement that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. In the event of any inconsistencies between the terms of this Agreement and the Lease and License, the terms of this Agreement shall prevail. Time is of the essence of this Agreement. Neither this Agreement nor any of the terms hereof may be amended or modified except by a written instrument signed by all the Parties hereto. This Agreement has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, the provisions of this Agreement must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the Parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this Agreement.

18. California Law; Venue. This Agreement is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

19. Lease and License in Full Force and Effect. Until the Termination Date, this Agreement shall not be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Lease or License by either Party.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, PORT and TENANT execute this Agreement as of the last date set forth below.

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

By: _____
Rebecca Benassini
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: 340 JEFFERSON, LLC, a California limited liability company,
DBA POMPEI'S GROTTO

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

MEYERS: SOLELY AS TO SECTION 9(B)

By: _____
Name: Garrett Meyers

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Name: A. Mathai-Jackson
Deputy City Attorney

Agreement Prepared By: Don Kavanagh, Senior Property Manager: _____ (initial)

Port Commission Reso. _____ (April 25, 2023)
Board of Supervisors Reso. _____ (_____, 2023)

EXHIBIT A

FORM OF BILL OF SALE

For good and valuable consideration the receipt of which is hereby acknowledged, 340 Jefferson, LLC, a California limited liability company dba Pompei's Grotto ("**Tenant**"), does hereby transfer and convey to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Port Commission ("**Port**") all personal property owned by Tenant and located on or in or used in connection with the Premises that is the subject of Lease No. L-8986 dated as of March 12, 1975, by and between Port and Tenant's predecessor in interest, Pompei Enterprises Corporation, a California corporation ("**Original Tenant**"), as assigned to Tenant pursuant to that certain Asset Purchase Agreement dated May 22, 2015 (the "**Asset Purchase Agreement**"), which assignment was consented to by the Port pursuant to that certain Consent to Assignment dated June 16, 2015 (as assigned, the "**Lease**") and located on or in or used in connection with the License Area that is the subject of Sidewalk Encroachment Permit Revocable License No. E-13772, between Port and Original Tenant, as assigned to Tenant pursuant to the Asset Purchase Agreement, which assignment was consented to by the Port pursuant to that certain Consent to Assignment dated June 16, 2015 (as assigned, the "**License**"), those items generally described in *Schedule 1* attached hereto.

Tenant does hereby represent to Port that Tenant is the lawful owner of such personal property, that such personal property is free and clear of all encumbrances, and that Tenant has good right to convey the same as aforesaid and will warrant and defend the title thereto unto Port, its successors and assigns, against the claims and demands of all persons whomsoever.

DATED this _____ day of _____, 20__.

340 JEFFERSON, LLC, a California limited liability company, DBA POMPEI'S GROTTTO

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

Dated: _____

SCHEDULE 1

TENANT'S PERSONAL PROPERTY BEING CONVEYED TO PORT BY BILL OF SALE

**EXHIBIT B
FORM ESTOPPEL CERTIFICATE**

The undersigned ("**Undersigned**") hereby certifies, represents and warrants as of _____, 2023 to THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION ("**Port**"), the following in this estoppel certificate (this "**Certificate**"):

1. The Undersigned certifies, represents and warrants:

(a) That there is presently in full force and effect (i) Lease No. L-8986 by and between Port and the Undersigned's predecessor in interest, Pompei Enterprises Corporation, a California corporation ("**Original Tenant**") dated as of March 12, 1975, as assigned to Tenant pursuant to that certain Asset Purchase Agreement dated May 22, 2015 (the "**Asset Purchase Agreement**"), which assignment was consented to by the Port pursuant to that certain Consent to Assignment dated June 16, 2015 (as assigned, the "**Lease**"), covering approximately 4,140 square feet of real property having an address at 340 Jefferson Street, as further described in the Lease (the "**Premises**"), and (ii) Sidewalk Encroachment Permit Revocable License No. E-13772, between Port and Original Tenant, as assigned to Tenant pursuant to the Asset Purchase Agreement, which assignment was consented to by the Port pursuant to that certain Consent to Assignment dated June 16, 2015 (as assigned, the "**License**;" together with the Lease, the "**Agreements**") between the Undersigned and Port, covering a portion of sidewalk adjacent to the Premises (the "**License Area**;" together with the Premises, the "**Property**").

(b) That the Agreements represent the entire agreement between Port and the Undersigned with respect to the Property.

(c) That the commencement date under the Lease was _____ and _____ under the License; and the expiration date of the Lease is _____, 20__ and under the License is _____.

(d) That the present minimum monthly Base Rent under the Lease is \$ _____ and \$ _____ under the License.

(e) Port does not hold any security deposit under the terms of the Lease or License as such deposit has been fully applied against outstanding rent and Port holds no other deposit from the Undersigned for security or otherwise.

2. The Undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

3. This Certificate shall be binding upon the Undersigned and inure to the benefit of Port and the Undersigned recognizes and acknowledges it is making these representations to Port with the intent that Port will fully rely on the representations and warranties in this Certificate.

4. From the date of this Certificate and continuing until the date that is twelve (12) months from the Termination Date (as defined in the Mutual Termination Agreement for Lease No. L-8986 and License No. E-13772), the Undersigned agrees to notify Port immediately of the discovery of any fact or occurrence that would make any representation contained in this Certificate inaccurate as of the date hereof or as of any future date.

340 Jefferson, LLC, a California limited liability company, **dba Pompei's Grotto**

By: _____
Name: _____

By: _____
Name: _____

Title: _____

Title: _____

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>
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(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.

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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.

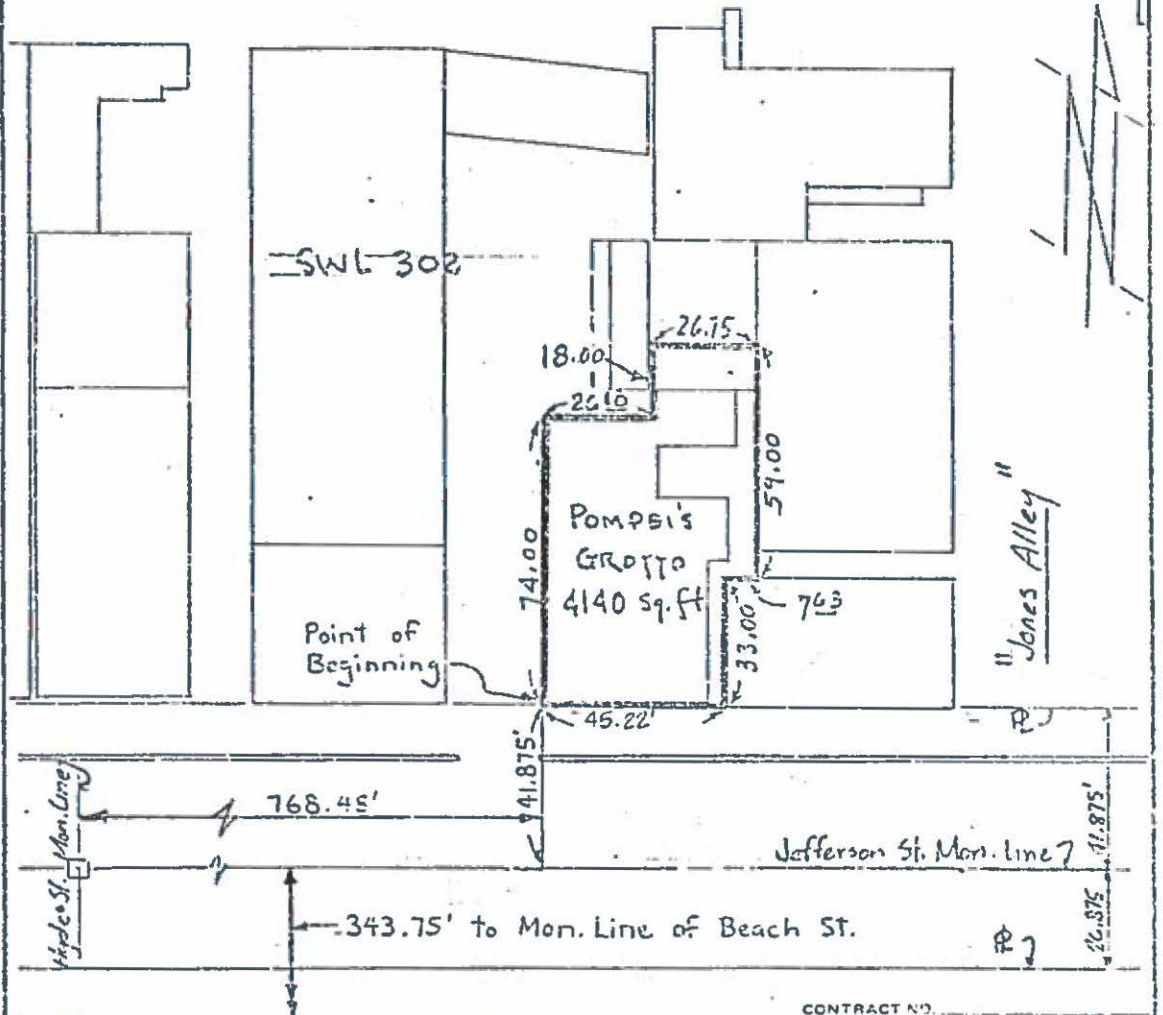
Sheet 1 of 2
See Dwg. No. 8724-302-6
4-24-75.

EXHIBIT A

San Francisco Bay

EXHIBIT A

Edge of Decking



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING		SWL 302 POMPEI'S GROTTA Description		CONTRACT NO.	
IN CHARGE OF [Signature]	MADE BY GAN	CHECKED BY GAN	DATE 4/24/75	SCALE 1"=40'	SHEET NO. 2 OF 2

ORIGINAL

CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM, MAYOR

SIDEWALK ENCROACHMENT PERMIT AND REVOCABLE LICENSE

E-13772

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

**POMPEI ENTERPRISES CORPORATION,
a California Corporation**

**Monique Moyer
Executive Director**

SAN FRANCISCO PORT COMMISSION

**Wilfred Hsu, President
Michael Hardeman, Vice President
Sue Bierman, Commissioner
Kimberly Brandon, Commissioner
Ann Lazarus, Commissioner**

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Attachments

- Exhibit A, Premises
- Exhibit B, Design Criteria
- Exhibit C, Addendum

SAN FRANCISCO PORT COMMISSION

SIDEWALK ENCROACHMENT PERMIT AND REVOCABLE LICENSE E - 13772

This Sidewalk Encroachment Permit and Revocable License ("License"), dated for reference purposes only as of February 17, 2005, by and between the City and County of San Francisco ("City"), acting by and through the San Francisco Port Commission ("Port"), and Pompei Enterprises Corporation, a California Corporation ("Licensee").

This License is entered into upon the following facts and understanding of the parties:

A. Licensee, as tenant under Lease Number L-8968 executed March 12, 1975 (the "Lease") with the Port of San Francisco, California, desires to use approximately 310 square feet of the adjacent sidewalk owned by the Port as shown on the attached Exhibit A (the "License Area") as a sidewalk café, crabstand, and associated service area under the terms of this revocable License.

B. Port is willing to allow Licensee to enter onto the License Area for said purpose, said entry to be in accordance with the conditions of this License.

NOW, THEREFORE, the parties hereto agree as follows:

Port hereby grants to Licensee a temporary, non-exclusive, revocable license to enter upon the License Area for the non-exclusive use as a sidewalk café, crabstand and associated service area for this use solely. Licensee's use of the License Area shall be subject to all of the terms and conditions of this License:

1. APPEARANCE

Licensee's fixtures and furnishings should reflect the industrial and maritime character of the Fish Alley area as indicated on Pages 76 and 77 of the Waterfront Design Criteria republished in June 2004, attached hereto and made a part hereof as Exhibit B. Licensee shall not place any signs in the License Area without the prior written consent of Port. Port reserves the right to approve of Licensee's display in the License Area and to revoke this license if such display is not in compliance with Port's approved display.

2. PERCENTAGE RENTAL

All sales made on the License Area shall be included in the Gross Receipts pursuant to Section 2(b) of the Lease and Licensee shall pay percentage rent to Port on the Gross Receipts generated on the License Area as provided in Section 2(b) of the Lease.

3. SUITABILITY, ACCEPTANCE

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By taking possession of the License Area, Licensee shall be deemed to have inspected the License Area and accepted the License Area in an "As-Is" condition and as being suitable for the conduct of Licensee's business.

4. LIENS

Licensee shall keep the License Area free from any liens arising out of any work performed, materials furnished or obligations incurred by Licensee or its Agents. In the event that Licensee shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, Port shall have, in addition to all other remedies provided by this License or by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Port for such purpose and all reasonable expenses incurred by Port in connection therewith shall be payable to Port by Licensee within thirty (30) days following written demand by Port.

5. MAINTENANCE

Licensee shall maintain the License Area in a neat, clean, orderly and attractive condition at all times, free from garbage, debris and other waste matter. Port reserves the right to hose down or sweep the License Area after business hours as Port deems necessary and to provide additional maintenance services if Licensee fails to maintain the License Area in the condition required hereunder, and Licensee shall reimburse Port for the reasonable cost of such additional services. Licensee shall prevent any loitering in or about the License Area by persons other than Licensee's patrons.

6. DURATION

This License shall be effective March 1, 2005 and shall continue until revoked by either party. Either Licensee or Port may cancel and revoke this License at any time and without cause upon twenty-four hours written notice to the other. Prior to the effective date of such revocation, Licensee shall remove or cause to be removed all personal property of Licensee, its agents, contractors and licensees, without expense to Port, and shall restore the License Area to a condition satisfactory to Port. This License is personal to Licensee and shall not be assignable or transferable by Licensee under any circumstances.

7. USE; MANNER OF USE

Licensee shall use the License Area only for a sidewalk café, crabstand and associated service area in accordance with the terms and conditions hereof and for no other purpose. Changes in type or function of business or other changes in use shall be made only upon the express written consent of Port. Licensee shall not use Port property in any manner that will constitute waste, nuisance or unreasonable annoyance to Port, its tenants or the owners or occupants of adjacent properties. Licensee's operations hereunder shall not interfere or impede the use of any roadway or sidewalk upon which the License Area is located by the public, other Port tenants or the Port. Licensee shall leave the License Area in as good or better condition than that in which the License Area existed prior to Licensee entering the License Area.

8. INSURANCE

a. Licensee, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the term of this License, insurance as follows:

(1) Workers' Compensation Insurance with employer's liability limit not less than One Million Dollars (\$1,000,000.00) each accident, but only if Licensee has employees as defined by the California Labor Code;

(2) Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broadform property damage, fire damage legal liability not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), personal injury, products and completed operations.

(3) Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned and hired vehicles.

b. Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the term of this License and, without lapse, for a period three years beyond the License expiration, to the effect that, should occurrence during the License term give rise to claims made after expiration of the License, such claims shall be covered by such claims-made policies.

c. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation of legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified above.

d. All liability policies required by this License shall name as additional insureds City and Port, their officers, agents and employees, and shall be primary to any other insurance available to the additional insureds. All policies shall provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage in person or by mail to Port's address as set forth in Section 18 of this License. The permis-

sion for Licensee to use the License Area pursuant to this License shall automatically terminate upon the termination of such insurance. Licensee shall furnish certificates of insurance in a form acceptable to Port evidencing all coverages required prior to the commencement date of the License with complete copies of policies upon Port's request.

e. Port and Licensee shall periodically review the limits and types of insurance carried pursuant to this Paragraph to this Section 8. If it is found to be the general commercial practice in the City and County of San Francisco to carry liability insurance in an amount substantially greater than the amount then being carried by Licensee with respect to risks comparable to those associated with the License Area, the amounts carried by Licensee shall be increased to conform to such general commercial practice.

9. COMPLIANCE WITH LAWS

Licensee, at Licensee's cost and expense, shall comply with all laws, ordinances, judicial decisions, orders and regulations of federal, state, county and municipal governments and the departments, courts, commissions, boards and officers thereof pertaining to Licensee's use and occupation of the License Area in effect either at the time of execution of this License or at any time during the term hereof. Licensee further understands and agrees to be responsible and comply within the License Area with 42 USC 12101, et seq., commonly known as the Americans with Disabilities Act.

Licensee understands and agrees that Port is granting this License in its capacity as a landowner with a proprietary interest in the License Area and not as a regulatory agency of the City with certain police powers. Port's legal status as a department of the City shall in no way limit the obligation of the Licensee to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the License Area, including the Port. By granting this License, Port is in no way modifying or limiting the obligation of Licensee to cause the License Area to be used and occupied in accordance with all laws, rules and regulations of the City, the State of California and the United States. Without limiting the generality of the foregoing, Licensee specifically agrees to obtain any and all necessary permits, licenses or approvals from the San Francisco Police Department as may be necessary to use this License Area.

10. HAZARDOUS MATERIALS

a Use Prohibited. Neither Licensee nor its agents, employees, contractors, licensees, sublessees, assignees, concessionaires or invitees shall use, handle, store or dispose of any Hazardous Materials in, on, under or about the License Area. If Licensee breaches the foregoing restriction, Licensee shall be solely responsible for and shall indemnify, defend and hold Port and City, their officers, employees and agents, harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in valuation of the License Area, and sums paid in settlement of claims and for attorneys' fees, consultant fees and expert fees) which arise during or after the term of this License as a result of any contamination directly or indirectly arising from the activities which are the basis for such breach. This indemnification of Port and City by Licensee includes, without limitation, costs incurred in connection with any investigation or site conditions or any clean-up, remedial, removal or restoration work. Licensee shall promptly take all actions, at its sole cost and expense, as are necessary to return the License Area to the condition existing prior to the introduction of any such Hazardous Material, provided Port's approval of such actions shall first be obtained and Licensee shall fully cooperate in connection with any such clean-up, restoration or other work, at Licensee's sole costs and expense. Furthermore, Licensee shall immediately notify Port of any inquiry, test, investigation or enforcement proceeding by or against Licensee or the License Area concerning the presence of any Hazardous Material. Licensee acknowledges that Port, at Port's election, shall have the sole right, at Licensee's expense, to negotiate, defend, approve and appeal any action taken or order issued by any governmental authority with regard to any Hazardous Material contamination which Licensee is obligated hereunder to remediate. Licensee's obligations under this Paragraph 10 shall survive termination of this License.

b Definition of Hazardous Material. "Hazardous Material" shall mean asbestos, any petroleum fuel and any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance defined as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substance", "hazardous material", or "toxic pollutant" under the California Health and Safety Code and/or under the Comprehensive Environmental Response, Compensation and Liability

Act, 42. U.S.C. Section 9601, et seq.

11. NO COSTS TO PORT

Licensee shall bear all costs or expenses of any kind or nature in connection with its use of the License Area.

12. MAINTENANCE; REPAIR OF DAMAGE

Licensee shall keep the License Area and appurtenances in good and sanitary order, condition and repair.

If any portion of the License Area or any other property of Port is damaged by any of the activities permitted hereunder or conducted by Licensee, its officers, agents, employees, invitees or licensees, Licensee shall immediately, at its own cost and expense, repair any all such damage and restore said property to its undamaged condition. Port has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the License Area. Licensee has the sole responsibility to locate the same and to protect the same from damage during any activity by Licensee and shall be solely responsible for any damage to utilities.

13. INDEMNIFICATION

Licensee shall indemnify and hold Port, City, and their agents, officers, directors, contractors and employees (collectively, "Agents") harmless from, and, if requested, shall defend them against any and all claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any injury to or death of any person, including employees of Licensee, or damage to or destruction of any property occurring in, on or about the License Area, or any part thereof, from any cause whatsoever, or (b) any default by Licensee in the observance or performance of any of the terms, covenants or conditions of this License, or (c) the use, occupancy or condition of the License Area or the activities therein by Licensee, its Agents, or clients, customers, invitees, guests, members, licensees, assignees and subtenants (collectively, "Invitees"). This indemnity shall be enforceable regardless of the negligence of Port or City, and regardless of whether liability without fault is imposed or sought to be imposed on Port or City. This indemnity shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this License. This indemnity includes all such loss, damage, injury, liability or claims as described above, loss predicated in whole or in part, upon active or passive negligence of Port, City or their Agents. This indemnity shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of Port or City which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Licensee, its Agents or invitees.

In addition to Licensee's obligation to indemnify Port and City, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Port and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Licensee's obligation to defend shall arise at the time such claim is tendered to Licensee by Port and/or City and shall continue at all times thereafter.

The foregoing indemnity obligation of Licensee shall include without limitation, indemnification from all loss and liability, including attorney's fees, court costs and all other litigation expenses. This indemnification by Licensee shall begin from the first notice that any claim or demand is or may be made. The provisions of this section shall survive the termination of this License with respect to any damage, destruction, injury or death occurring prior to such termination.

14. WAIVER OF CLAIMS

Licensee, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against Port, City and their officers, agents and employees, and agrees to hold Port and City and their officers, agents and employees harmless from any claims for damages, including all claims arising from the joint or concurrent negligence of Port or City, or their officers, agents, or employees, but excluding any intentionally harmful acts committed solely by Port or City.

15. WAIVER OF RELOCATION

Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601 et seq., or under any similar law, statute or ordinance now or

hereafter in effect.

16. ATTORNEYS' FEES

If Port or Licensee commences an action against the other party arising out of or in connection with this License, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees and costs of suit. For purposes of this License, reasonable attorneys' fees of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience who practice in the City in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

17. CITY REQUIREMENTS

17.1 Non-Discrimination

(a) Covenant Not to Discriminate In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all Subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this lease.

(c) Non-Discrimination in Benefits Tenant does not as of the date of this Lease and will not during the Term, in any of its operations within the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the Nondiscrimination in Contracts and Benefits form approved by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

17.2 MacBride Principles-Northern Ireland

City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

17.3 Tropical Hardwood and Virgin Redwood Ban

City urges Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product.

17.4 Tobacco Products Advertising Ban

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or non-profit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

17.5 First Source Hiring

The City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Section 83.1 *et. seq.*) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Pursuant to §83.7(b) of the First Source Hiring Ordinance, the Port Commission has adopted a First Source Hiring Implementation and Monitoring Plan ("Port Plan") subject to approval by the First Source Hiring Administration. Tenant acknowledges receiving and reviewing the First Source Hiring Ordinance. Under Section 83.9(d) of the first Source Hiring Ordinance, compliance by an employer with the Port Plan is deemed to be compliance with the provisions of the First Source Hiring Ordinance.

Based on the foregoing Tenant agrees to comply with the Port Plan through compliance with all of the following measures:

(a) Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the *Job Survey Form* provided by the Port of San Francisco. The Port will also provide the Tenant with a detailed instruction sheet summarizing the procedure for the commencement of the lease. Tenant shall return the *Job Survey Form* to the Port within thirty (30) days after execution of the lease by the Port and Tenant.

For purposes of this Agreement the terms "Entry Level Position", "San Francisco Workforce Development System", "Qualified Economically Disadvantaged Individual", and "First Source Hiring Agreement" shall have the meaning provided in Section 83.4 of the San Francisco Administrative Code.

Tenant shall notify the San Francisco Workforce Development System of all vacancies for existing or new Entry Level Positions on the premise, during the lease term, and shall offer the San Francisco Workforce Development System the first opportunity to provide Qualified Economically Disadvantaged Individuals for employment in these positions.

(b) Tenant shall not publicize or otherwise post such vacancies until the San Francisco Workforce Development System refers Qualified Economically Disadvantaged Individuals for employment in these positions or notifies Tenant that no Qualified Economically Disadvantaged Individuals are available for the particular vacancies. The San Francisco Workforce Development System shall respond to Tenant within ten (10) business days. After ten (10) business days, if the San Francisco Workforce Development System does not refer applicants, Tenant can advertise and fill Entry Level Positions outside of the City referral system.

(c) Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to Section 83.10 of the Ordinance, if upon administrative review, it is determined that Entry Level positions were not made available to the San Francisco Workforce Development System for referral of Qualified Economically Disadvantaged Individuals, and the Employer does not remedy the violations, the Employer shall be assessed a penalty in the amount of Two Thousand Seventy Dollars (\$2,070) for every new hire for an Entry Level Position improperly withheld from the First Source Hiring process

17.6 Requiring Health Benefits for Covered Employees

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.sfgov.org. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease.

(d) If, within thirty (30) days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such thirty (30)-day period Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(e) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(h) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(i) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(j) Within five (5) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

(k) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000 (or \$50,000 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000 in the fiscal year.

17.7 Pesticide Prohibition

Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to Port an integrated pest management (IPM) plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (B) describes the steps Tenant will take to meet the City's IPM Policy described in section 39.1 of the Pesticide Ordinance and (C) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the

City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

Through Port, Tenant may seek a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Lease, as provided in Section 39.8 of the Pesticide Ordinance. Port shall reasonably cooperate with Tenant if Tenant seeks in good faith an exemption under the Pesticide Ordinance, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses.

17.8 Green Building Ordinance.

City has adopted a Resource Efficient City Building Ordinance (S.F. Admin. Code §§ 82.1-82.8). That Ordinance requires new tenants under new leases of City-owned buildings to comply with certain resource-efficient standards for installation of low-flow toilets and shower heads, installation or replacement of energy efficient light fixtures and exit signs, design and implementation of indoor air quality maintenance plans, provision of adequate space for collection, storage and disposal of recyclable materials, and, for construction projects of \$1,000,000 or more, design and implementation of measures to prevent moisture contamination in building materials and to require encapsulation of fibrous insulation materials, and implementation of measures to handle construction and demolition debris pursuant to a construction and demolition debris management plan. To the extent that said Ordinance applies to the Premises, and except to the extent waived or exempted by the Executive Director of the Port upon request by the Tenant, Tenant shall comply with the requirements of such Ordinance.

17.9 Notification of Limitations on Contributions.

San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 1.126 prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

18. NOTICES

Any notice given under this License shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

Port: **Manager, Leasing and
Commercial Property Management
Port of San Francisco
Pier 1
San Francisco, CA 94111**

Licensee: **Nancy Conyers
Pompei's Grotto
340 Jefferson Street
San Francisco, CA 94133**

And, if Tenant is a corporation, to Tenant's agent for service of process:

Nancy Conyers
245 Pixley Street
San Francisco, CA 94123

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this License shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

19. MISCELLANEOUS PROVISIONS

- a Time is of the Essence. Time is of the essence of each provision of this License.
- b Signs. Licensee shall not have the right to place, construct, or maintain any sign, advertisement, awning, banner, or other exterior decoration on or about the License Area without Port's written consent, which consent may be withheld in Port's sole discretion.
- c California Law. This License shall be construed and interpreted in accordance with the laws of the State of California.
- d Entire Agreement. This License contains all of the representations and the entire agreement between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this License.
- e Amendments. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by Port and Licensee.
- f Severability. Invalidation of any provision of this License, or of its application to any person, by judgement or court order shall not affect any other provisions of this License or its application to any other person or circumstance, and the remaining portions of this License shall continue in full force and effect, unless enforcement of this License as invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this License.
- g Waiver. No delay or omission in the exercise of any right or remedy of Port on any default by Licensee shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Port of any delinquent license fee shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular license fee payment involved. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee.
- h Authority. The undersigned signator on behalf of Licensee has full corporate power and authority to enter into this License and to consummate the transactions contemplated by it. This License has been duly authorized by all necessary action on the part of Licensee and no other action on the part of Licensee is necessary to authorize the execution and delivery of this License.

////
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IN WITNESS WHEREOF, the parties hereto have executed this License as of the last date written below.

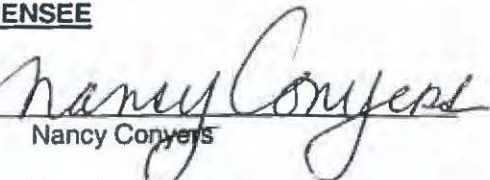
PORT

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the SAN FRANCISCO PORT COMMISSION

By: 
Monique Moyer
Executive Director

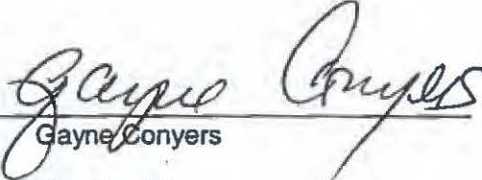
Dated: 5/14/05

LICENSEE

By: 
Nancy Conyers

Its: Secretary-Treasurer

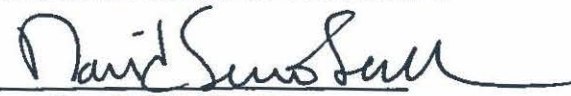
Date: 3-3-05

By: 
Gayne Conyers

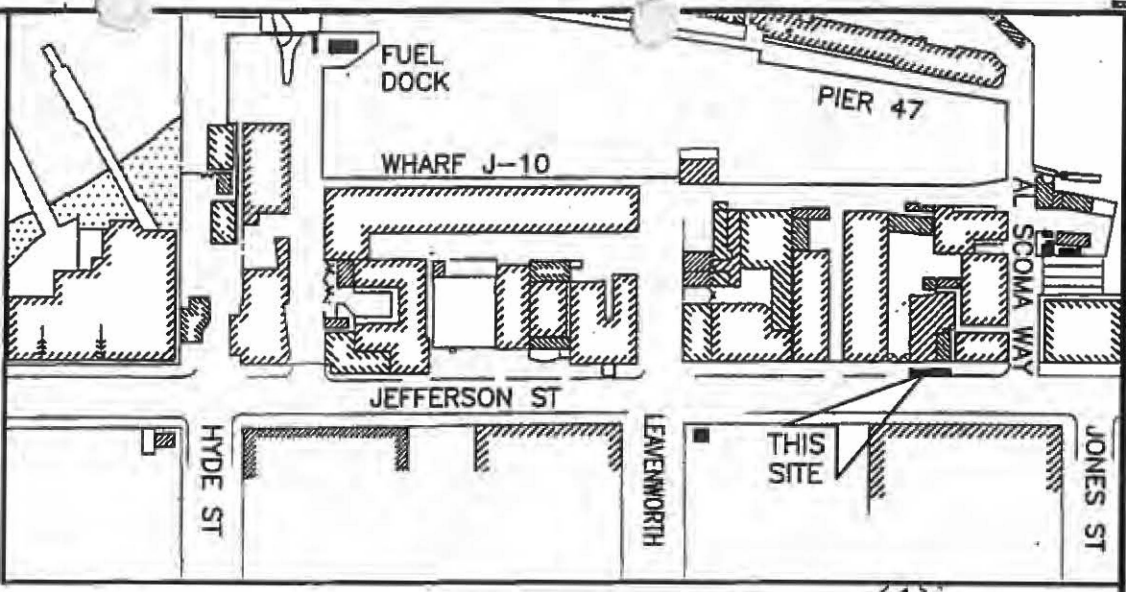
Its: Vice President

Date: 3-3-05

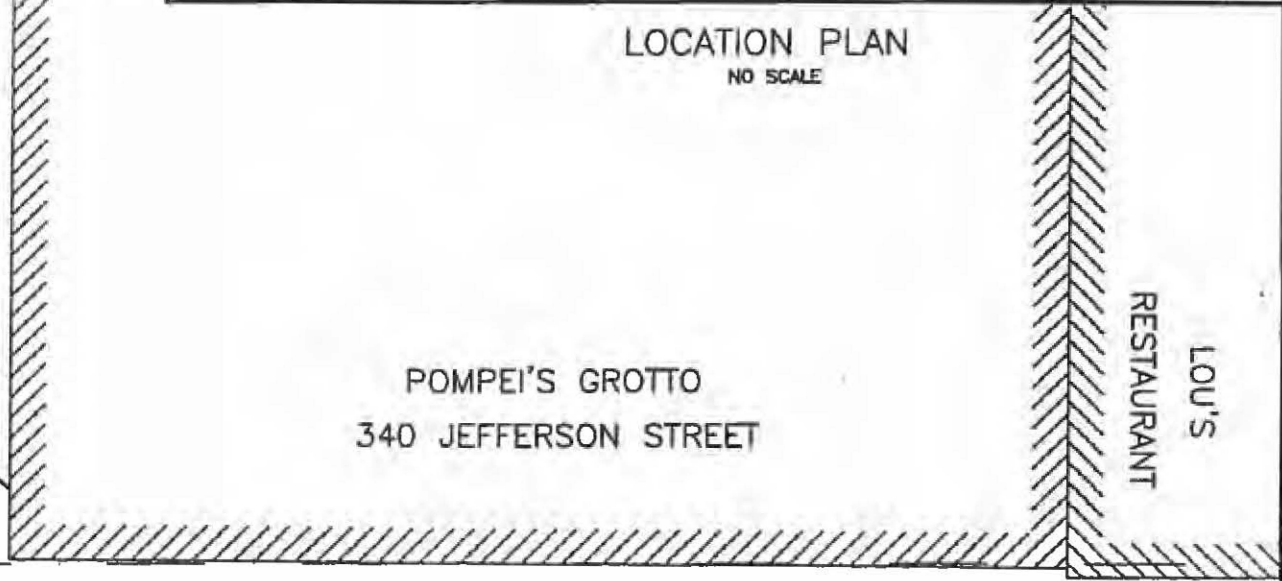
APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By: 
Deputy City Attorney

Permit Prepared By: Claudia Davison, Property Manager cd (Initials)

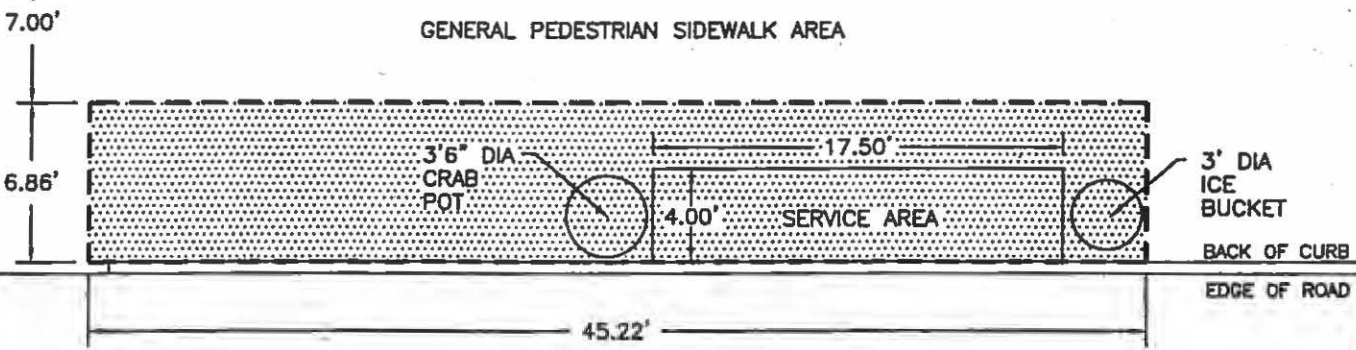


LOCATION PLAN
NO SCALE



POMPEI'S GROTTO
340 JEFFERSON STREET

LOU'S
RESTAURANT



POMPEI ENTERPRISES CORPORATION
SIDEWALK ENCROACHMENT PERMIT
AREA = 310.2 Sq Ft

EXHIBIT A

INITIALS: PORT: ce TENANT: [Signature] DATE: 3/3/05

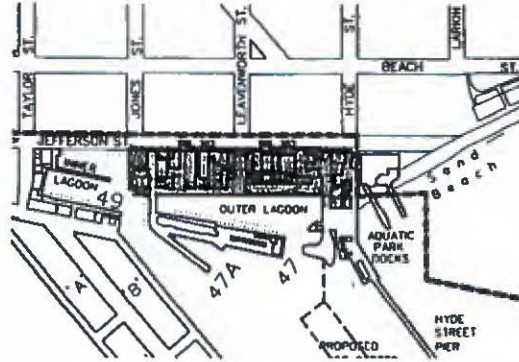
LEASE NO.
L-13772
SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT
POMPEI ENTERPRISES, CORP.

DRAWN BY: ECC
CHECKED BY: C. DAVISON
SCALE: NONE
DATE: FEB 2, 2005
SHEET NO. 4004-00
OF SHEETS

Design Criteria

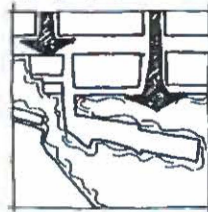
SEAWALL LOTS 302 & 303 (Fish Alley Area)



The Fish Alley area is an eclectic mix of small-scale structures built to serve the fishing industry. Some of the buildings remain in use by the industry while others along Jefferson Street have converted to retail or restaurant uses. The following design criteria were developed in recognition of the area's unique character, and incorporate the Secretary of the Interior's Standards for Rehabilitation. The Standards state that original building fabric be retained whenever possible, and that new

changes be designed to be compatible with, but not replicate historic building features. Before commencing improvements within this area please also consult the Fish Alley Area Historic Resources Evaluation and Design Recommendations, available at the Port's offices, and the Standards in Appendix B of this document.

Scale



VIEWS: View corridors down Jones and Leavenworth Streets should be maintained by discouraging new development along these two streets within Fish Alley.

VIEWS: Existing views can be maintained by limiting the height of new development within Fish Alley to two stories.



MASSING: Articulate the massing of new development and additions so that they respect the building widths, heights, and simple massing and detailing of Fish Alley's existing buildings.



MASSING: The footprint of new development and additions to existing buildings along Jefferson Street should extend the width of the lot with no side setbacks so that the continuity of the street facade wall is maintained.

Scale



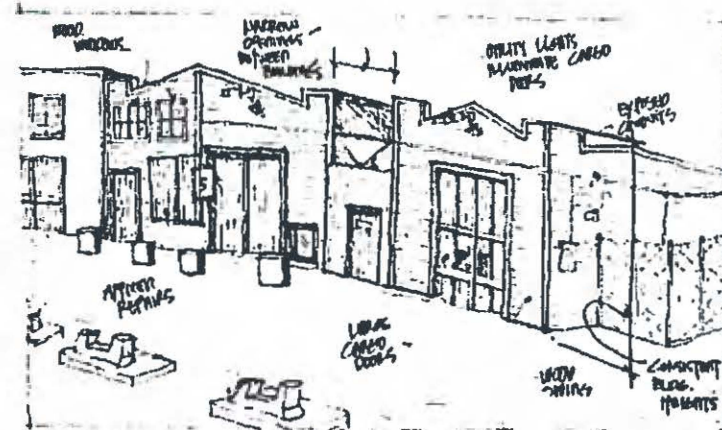
SCALE: Appreciate the scale that the typical building heights of neighboring buildings contribute to the character of the streetscape by holding new development to two stories or less.



SITE COVERAGE: The front setbacks of new development along Jefferson Street should vary slightly in keeping with the existing architectural street pattern.



SITE COVERAGE: The placement of infill development on the interior of the Fish Alley Area should not encroach on the boundaries of the narrow alleyways, and should serve to enhance the delineation of the edges.



This grouping of buildings on Jones Street contain many of the architectural details that define the industrial, maritime character of Fish Alley.

Design Criteria

SEAWALL LOTS 302 & 303

-- Continued from previous page --

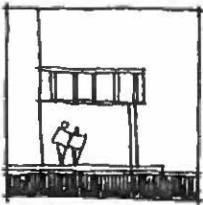
Architectural Details



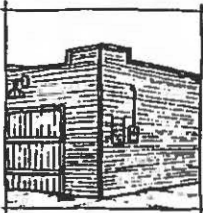
ARTICULATION: Opening patterns should be designed to communicate a human scale to pedestrians by articulating floor levels, or through glazing divisions.



ARTICULATION: New development or additions should respect existing patterns and proportions of alternating openings and solidity of walls.



CHARACTER -- Jefferson Street: Along Jefferson Street, avoid blank ground floor walls by providing views into the ground floor of buildings. Allow awnings or arcades to extend commercial building activities onto and over the sidewalk areas.



CHARACTER: Maintain the horizontal orientation of existing patterns throughout Fish Alley by aligning the horizontal elements of new development and additions with those of existing buildings.

Architectural Details

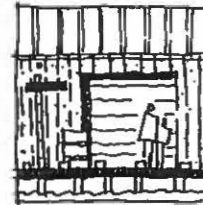


MATERIALS: Varying building materials between existing buildings and additions is encouraged to visually distinguish new from old.

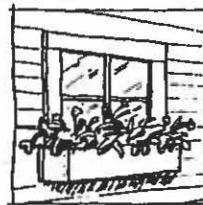
MATERIALS: New development and additions should be constructed with simple, industrial materials that typify those found throughout Fish Alley.



SIGNAGE: New signage within the Fish Alley Study area should be kept simple and small scaled. The design of new signage should be in keeping with the historic signs of Fish Alley. Painted wood signs hung off the buildings or painted directly on the buildings are encouraged. Neon signs are not appropriate for the Fish Alley Area.

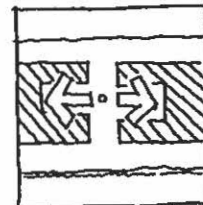


SITE FURNISHINGS: Site furnishings and landscaping should be kept minimal and simple, and should reflect the industrial and maritime character of the Fish Alley Area.



LANDSCAPING: New landscaping within the Fish Alley Study area should be limited to small scaled plantings in planter boxes, and should not include street trees.

Service



SERVICE: Provide service access from interior alleys or north/south streets if feasible.

TRASH ENCLOSURES: Use fences or other lockable enclosures to screen trash facilities from public view, and incorporate appropriate water quality protective measures to comply with all water quality environmental laws and regulations.

EXHIBIT C
ADDENDUM TO LEASE NO. E-13772
THE CITY AND COUNTY OF SAN FRANCISCO, THROUGH THE
SAN FRANCISCO PORT COMMISSION, Landlord,

and

POMPEI ENTERPRISES CORPORATION,
a California corporation, Licensee

In the event of any conflict between the provisions of this Addendum and provisions of the License, the provisions of this Addendum shall control.

Port and Licensee hereby agree as follows:

1. Section 8.a.(2) Insurance is hereby amended in its entirety to read as follows:

(2) Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broadform property damage, fire damage legal liability not less than Fifty Thousand Dollars (\$50,000.00), personal injury, products and completed operations.

Remainder unchanged.

Initials: Port Tenant



MEMORANDUM

April 21, 2023

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Ed Harrington
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of a Mutual Termination Agreement with 340 Jefferson, LLC, dba Pompei's Grotto; Lease No. L-8986 and License No E-13772 for Premises at 340 Jefferson Street, SWL 302 San Francisco, CA 94111, subject to Board of Supervisor's approval.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 23-18

EXECUTIVE SUMMARY

340 Jefferson, LLC, a California limited liability company dba Pompei's Grotto ("Tenant") ceased operations in March 2020 due to the devastating financial impacts of the pandemic.¹ Business and convention travelers and international tourism have not returned to pre-pandemic levels and the Tenant claims to be unable to profitably operate citing unaffordable start-up costs, difficulty hiring personnel, and lack of customers. Port staff is proposing to enter a mutual termination agreement as described in this memorandum.

As of January 24, 2023, the Tenant owes the Port \$495,000 (after application of security deposit to the balance due) in past due rent.² Note the Lease does not give the Port the

¹ See attached "Profit and Loss – Detail" provided by the Tenant for CY 2019 through 2021.

² See attached L-8986 ledger provided by the Port's accounting supervisor. Base rent is \$14,351/month and will continue to accrue after January 24, 2023.

authority to charge interest. As part of the mutual termination, Tenant would, among other things, (i) pay Port (a) a lump-sum \$150,000 termination fee and (b) \$2,800 to reimburse Port for costs to board up the entry alcove at the leased premises with Tenant's approval, and (ii) Port would keep all the personal property in the premises (e.g. restaurant equipment, furniture, etc.), reported by Tenant to be valued at \$122,000³ in exchange for the Port waiving \$345,000 in past due rent through January 24, 2023. Rent accruing from January 25, 2023, through date of full approval by the Board of Supervisors is also proposed to be waived. Tenant's Lease expires April 20, 2036.

Tenant failed to make base rent payments during the pandemic. Tenant did not qualify for 14 months of base rent forgiveness (which would have totaled about \$197K in forgiveness) under the Port's standard rent relief program because it was not in good standing due to its failure to open under the terms of the rent relief program.

Port staff recommend approval of the proposed termination agreement considering similar termination agreements Port has entered with other Port restaurant tenants.⁴ As proposed, this termination agreement would allow the Port to regain possession of a Port property in relatively good condition (located on land on Jefferson Street, thus no substructure maintenance issues). Port staff believe the Port's interests are best served by regaining possession of the property and re-leasing it as quickly as possible.

BACKGROUND

340 Jefferson (Pompei's Grotto) is in the heart of the Fisherman's Wharf Historic Fish Alley District.⁵ The restaurant offered fresh local seafood and Italian cuisine and outdoor dining. The site continuously operated as a restaurant from 1946 until the start of the pandemic.

On March 12, 1975, the Port entered into a sixty-one-year lease with Pompei Enterprises Corp. for the operation of a restaurant and entertainment venue. On February 17, 2005, Port and Pompei Enterprises Corp. entered a companion Sidewalk Encroachment Permit Revocable License E-13772 for the plaza in front of the restaurant. The Lease and License were assigned from Pompei Enterprises Corp. to 340 Jefferson, LLC on April 28, 2015. The Port consented to this assignment in June 2015.

Tenant advises there are no recorded loans or mortgages in place. Discussions with the Tenant determined that Tenant obtained two Paycheck Protection Program loans and one Economic Injury Disaster Loan, but since the Tenant did not reopen for business the loans are required to be repaid. One PPP loan has been repaid and Tenant and Garrett Meyers personally will represent and warrant in the Mutual Termination Agreement that the two

³ Tenant represents that the value of the items in the property transferred to the Port is approximately \$122,000. Port staff have not independently verified that value; however, the items listed by Tenant do appear to have some value. Port staff additionally believes that there is real value in not having to go through the delay and significant layout of hard dollar costs and staff time by Port staff to go through a complete inventory and auction process that would be required if the personal property were to be abandoned by the Tenant.

⁴ See attached "Analysis of Recent Terminations".

⁵ See attached location map.

remaining loans are personal to Garrett Meyers, not recorded against the premises, and will fully defend and indemnify the Port if the lender (SBA) records liens against the property or otherwise pursues the Port for payment or other resolution of the loans. The Port will not be releasing any claims related to these loans as part of the Lease termination.

Failure to Pay Rent

Because of the COVID pandemic and the loss of customers, the Tenant stopped paying rent as of March 1, 2020. Under the Lease and terms of the rent relief program, Tenant was obligated to pay base rent or percentage rent, whichever was more, and be open at least 10 days per month. Tenant has no plans to reopen, citing unaffordable start-up costs, difficulty hiring personnel, and a lack of customers. Failure to open has also breached several terms of the Lease.

PROPOSED TERMS OF AGREEMENT

Port staff propose to accept a \$150,000 termination fee on the following terms to resolve outstanding issues under the Lease and the License, including the litigation threatened by Port against Tenant:

1. Lease No. L-8986 and License No. E-13772 will be simultaneously terminated.
2. Subject to Port's discretion, most Tenant personal property and fixtures to remain on the premises, and title will be transferred to Port via Bill of Sale.
3. The Port will waive all accrued rent outstanding under the Lease and the License through the effective date of the termination agreement, which date will be after final approval of the termination agreement from the Board of Supervisors.
4. Tenant to allow Port to pursue back rent due through Tenant's insurance policies.
5. Tenant to indemnify Port for any claims related to the Paycheck Protection Act and other emergency loans.
6. Tenant will replace any broken glass in the premises and maintain the premises until the termination is final.
7. Tenant will remove exterior signage at its own cost or Tenant may request Port to remove the signage at a cost of \$3,500, which amount must be paid before the effective date of the termination agreement.
8. Tenant will remove the door providing access to storage space in adjacent Crab Boat Owner's Association premises and replace with like-kind wall materials before the lease termination date and provide a release of claims for the benefit of Port and City parties from the Crab Boat Owners Association ("**CBOA**") for the removal of the door and Tenant leaving the storage space in CBOA's premises.

STAFF ANALYSIS AND DISCUSSION

It is in the Port's best interest to enter into the proposed termination agreement as opposed to initiating litigation to recover sums owed and regain possession of the premises. Under the proposed termination agreement, Port is guaranteed recovery of a portion of the outstanding sums owed to Port, and Port staff believes, in consultation with the City Attorney, that this is the fastest way to regain possession of the premises. The termination agreement has been structured to minimize the amount of time it will take for Port to regain the premises, for example, by obviating the need to inventory and auction any personal property remaining in the space. Litigation, on the other hand, will require Port to expend potentially significant costs, including attorneys' fees, without a guarantee that Port will recoup those costs or the outstanding amounts owed by Tenant. Litigation will most likely also delay return of the premises to the Port beyond the date contemplated in the termination agreement including the potential of needing to litigate in Bankruptcy Court, where Port may receive significantly less than the \$150,000 currently offered. The premises are in good condition and a new operator has the option of operating almost immediately and can avoid major tenant improvement costs and construction downtime. In addition, the site and its closed, next-door neighbor (D&G Company – Lou's Pier 47) have experienced increasing vandalism and property damage. It is clear this Tenant does not have a plan or means to operate. Regaining possession and working towards a new lease is important to improve the overall Fisherman's Wharf visitor experience.

Port Maintenance staff inspected the premises twice and found minor deferred maintenance items such as tile needing grout, missing ceiling tiles, the need to install GFI outlets, and other similar items. Port maintenance staff determined these were minor wear and tear items and can be addressed by the next tenant to take possession.

For many months, Tenant stated that it could not provide any termination fee whatsoever and demanded Port forgive all accrued rent. After Port threatened litigation, Tenant offered \$50,000 as the sum total of costs. After further litigation threats, Tenant agreed to pay \$150,000 as its last, best, and final offer. Port negotiators believe the \$150,000 termination fee is the most the Tenant will agree to pay because multiple attempts to increase the fee, even marginally to \$175,000, were not successful. To compensate for this fee, Port negotiated to receive the property remaining in the premises (which may help a new tenant and will avoid the loss of time and cost of auctioning such property) and the ability to pursue insurance for back rent.

In summary, staff believes that the proposed terms are beneficial to the Port as:

1. The termination fee of \$150,000 represents 30% of the base rent balance due as of January 24, 2023 and is a significant increase over the \$0 that Tenant had long insisted it could pay;
2. Port will retain all personal property in the restaurant. Tenant estimated value is \$122,000 - approximately 25% of the base rent due;
3. Port would obtain possession of Premises promptly and avoid potentially lengthy and costly litigation;

4. Possession will allow the Port to solicit and re-lease the Premises and generate revenue significantly faster than going through further negotiations to increase the potential termination fee and an unlawful detainer action to re-take the premises (which could take many months); and,
5. The Premises are ready for a new restaurant tenant subject to minimal required improvements to start operations.

Alternatives to negotiating a mutual termination agreement to resolve these issues include:

1. Send the Tenant a 3-day notice to pay rent or quit and pursue an unlawful detainer action should Tenant not pay or vacate. An unlawful detainer action limits recovery to the past 12 months of rent to total approximately \$172,200 (as of January 2023). This process would likely take more than six months and could reasonably be expected to take more than a year. Port would need to initiate a separate civil action against Tenant to recover the remaining outstanding amounts owed to Port that are not covered by the unlawful detainer action. Such a suit would be unlikely to conclude in less than two years if it were to go to trial.
2. Tenant may abandon the premises. Significant Port and legal resources would then be needed to manage the abandonment.
3. Tenant may file for bankruptcy, making pursuit of the balance due more complicated and may result in little or no recovery (depending on Port's priority among other creditors).

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing the Executive Director to enter into the proposed Mutual Termination Agreement with 340 Jefferson, LLC, a California limited liability company, and authorize the Executive Director to forward the Mutual Termination Agreement to the Board of Supervisors for approval and upon the effectiveness of such approval, authorize the Executive Director or designee to execute the Mutual Termination Agreement.

Prepared by: Don Kavanagh, Senior Property Manager

For: Rebecca Benassini, Deputy Director
Real Estate and Development

Exhibits Exhibit 1: Site Location and Photo
Exhibit 2: Tenant Profit and Loss Statement
Exhibit 3: Tenant Ledger
Exhibit 4: Review of Similar Transactions

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 23-18

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, Port Lease No. L-8986 (“Lease”) and License No.E-13772 (“License”) between Port and Pompei Enterprises Corporation located at 340 Jefferson Street, SWL 302, in the City and County of San Francisco were assigned to 340 Jefferson, LLC (“Tenant”), which assignment received Port consent; and
- WHEREAS, Tenant closed for business in March 2020 due to the COVID pandemic and never reopened leading to a large balance due. Tenant approached the Port to terminate the Lease and License; and
- WHEREAS, The Lease expires April 20, 2036 and the License is terminable by either party on 24-hour notice; and
- WHEREAS, Port and Tenant now wish to agree on an orderly termination of the Lease and License per the terms of the Mutual Termination Agreement on file with the Commission Secretary (the “Mutual Termination Agreement”) and as described in the memorandum accompanying this resolution; and
- WHEREAS, Among other things, the Mutual Termination Agreement requires payment of a termination fee equal to \$150,000, repayment of Port’s cost to board-up the front door alcove of the premises with Tenant’s approval, and transfer of title to Port of Tenant’s personal property at the premises, all as more particularly described in the Memorandum to the Port Commission dated April 21, 2023; now, be it
- RESOLVED, That, subject to Board of Supervisors’ approval, the Port Commission approves the Mutual Termination Agreement and authorizes the Executive Director or her designee to execute such agreement in substantially the same form on file with the Port Commission Secretary; and, be it further

RESOLVED,

That the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Mutual Termination Agreement that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 25, 2023.

DocuSigned by:

Secretary
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Exhibit 1: Site Location and Photo

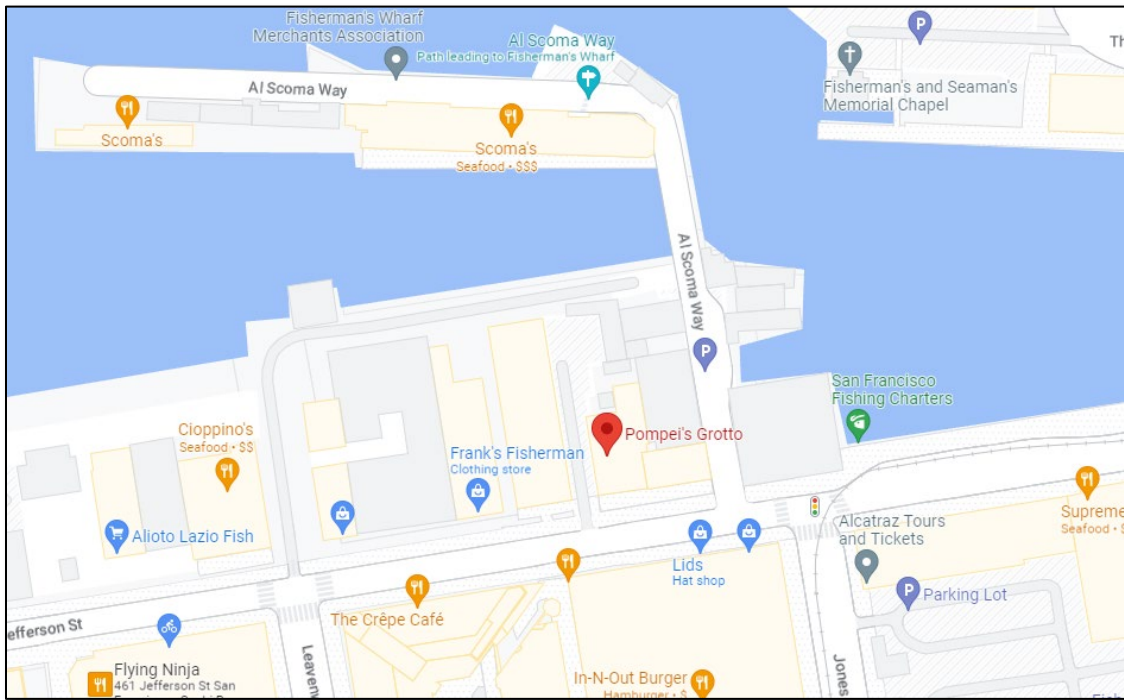


Exhibit 2: Tenant Profit and Loss Detail

Pompeis			
Profit and Loss Detail			
	Year to Date 12/31/2019	Year to Date 12/31/2020	Year to Date 12/31/2021
Total Net Sales	\$ 2,415,757.85	\$ 245,231.00	\$ -
Cost of Goods Sold	\$ 555,053.84	\$ 73,214.00	\$ -
Total Gross Profit	\$ 1,860,704.01	\$ 172,017.00	\$ -
Expenses			
Total Labor and Benefits	\$ 1,024,845.10	\$ 132,641.27	\$ 3,271.00
Total Other Operating Expenses	\$ 367,252.40	\$ 0.97	\$ 0,879.00
Total Operating Expenses	\$ 1,392,097.50	\$ 132,642.24	\$ 6,150.00
Total Non-Operating Expenses	\$ 101,427.36	\$ 24,637.03	\$ 17,648.00
Total Occupancy Expense	\$ 275,094.80	\$ 25,741.44	\$ 2,754.00
Total Expenses	\$ 1,768,619.66	\$ 183,020.71	\$ 20,402.00
Operating Profit	\$ 92,084.35	\$ (11,003.71)	\$ (20,402.00)
Other Expenses (Debt)	\$ 223,547.69	\$ 154,353.90	\$ 76,484.00
Net Income	\$ (131,463.34)	\$ (165,357.61)	\$ (96,886.00)

Exhibit 3: Tenant Ledger
As of January 24, 2023

340 Jefferson, LLC

L-8986

Balance as of 01/24/23

Item	Customer ID	Status	Entry Type	Days Late	Due	Item Balance
2007845	1000001124	Open	IN	1054	3/6/2020	\$ 1,195.32
2007845	1000001124	Open	OC	876	8/31/2020	
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2100003	1000001124	Open	IN	932	7/6/2020	\$ 10,829.54
2100003	1000001124	Open	OC	876	8/31/2020	
2100792	1000001124	Open	IN	901	8/6/2020	\$ 10,829.54
2100792	1000001124	Open	OC	876	8/31/2020	
2101668	1000001124	Open	IN	870	9/6/2020	\$ 10,829.54
2101668	1000001124	Open	OC	846	9/30/2020	
2102460	1000001124	Open	IN	840	10/6/2020	\$ 10,829.54
2102460	1000001124	Open	OC	815	10/31/2020	
2103335	1000001124	Open	IN	809	11/6/2020	\$ 10,829.54
2103335	1000001124	Open	OC	785	11/30/2020	
2104422	1000001124	Open	IN	779	12/6/2020	\$ 10,829.54
2104422	1000001124	Open	OC	754	12/31/2020	
2105059	1000001124	Open	IN	748	1/6/2021	\$ 10,829.54
2105059	1000001124	Open	OC	723	1/31/2021	
2105899	1000001124	Open	IN	717	2/6/2021	\$ 10,829.54
2105899	1000001124	Open	OC	695	2/28/2021	
2106660	1000001124	Open	IN	689	3/6/2021	\$ 10,829.54
2106660	1000001124	Open	OC	664	3/31/2021	
2107703	1000001124	Open	IN	658	4/6/2021	\$ 10,829.54
2107703	1000001124	Open	OC	634	4/30/2021	
2108279	1000001124	Open	IN	628	5/6/2021	\$ 10,829.54
2108279	1000001124	Open	OC	603	5/31/2021	
2109108	1000001124	Open	IN	584	6/19/2021	\$ 444.00
2109108	1000001124	Open	OC	573	6/30/2021	
2109119	1000001124	Open	IN	597	6/6/2021	\$ 10,829.54
2109119	1000001124	Open	OC	573	6/30/2021	
2200003	1000001124	Open	IN	567	7/6/2021	\$ 10,829.54
2200003	1000001124	Open	OC	542	7/31/2021	
2200773	1000001124	Open	IN	536	8/6/2021	\$ 10,829.54
2200773	1000001124	Open	OC	511	8/31/2021	
2201569	1000001124	Open	IN	505	9/6/2021	\$ 10,829.54
2201569	1000001124	Open	OC	481	9/30/2021	
2202428	1000001124	Open	IN	475	10/6/2021	\$ 10,829.54
2202428	1000001124	Open	OC	450	10/31/2021	

Tenant Ledger
As of January 24, 2023
(Continued)

340 Jefferson, LLC

L-8986

Balance as of 01/24/23

2203259	1000001124	Open	IN	444	11/6/2021	\$	10,829.54
2203259	1000001124	Open	OC	420	11/30/2021		
2204212	1000001124	Open	IN	414	12/6/2021	\$	10,829.54
2204212	1000001124	Open	OC	389	12/31/2021		
2205125	1000001124	Open	IN	383	1/6/2022	\$	10,829.54
2205125	1000001124	Open	OC	358	1/31/2022		
2205969	1000001124	Open	IN	352	2/6/2022	\$	10,829.54
2205969	1000001124	Open	OC	330	2/28/2022		
2206922	1000001124	Open	IN	324	3/6/2022	\$	10,829.54
2206922	1000001124	Open	OC	299	3/31/2022		
2207828	1000001124	Open	IN	293	4/6/2022	\$	10,829.54
2207828	1000001124	Open	OC	269	4/30/2022		
2208759	1000001124	Open	IN	263	5/6/2022	\$	10,829.54
2208759	1000001124	Open	OC	238	5/31/2022		
2209656	1000001124	Open	IN	230	6/8/2022	\$	444.00
2209656	1000001124	Open	OC	208	6/30/2022		
2210163	1000001124	Open	IN	232	6/6/2022	\$	10,829.54
2210163	1000001124	Open	OC	208	6/30/2022		
2300004	1000001124	Open	IN	202	7/6/2022	\$	10,829.54
2300004	1000001124	Open	OC	177	7/31/2022		
2300784	1000001124	Open	IN	171	8/6/2022	\$	10,829.54
2300784	1000001124	Open	OC	146	8/31/2022		
2301755	1000001124	Open	IN	140	9/6/2022	\$	14,351.49
2301755	1000001124	Open	OC	116	9/30/2022		
2302558	1000001124	Open	IN	116	9/30/2022	\$	102,136.55
2302558	1000001124	Open	OC	85	10/31/2022		
2302559	1000001124	Open	IN	116	9/30/2022	\$	4,717.27
2302559	1000001124	Open	OC	85	10/31/2022		
2302709	1000001124	Open	IN	110	10/6/2022	\$	14,351.49
2302709	1000001124	Open	OC	85	10/31/2022		
2303735	1000001124	Open	IN	79	11/6/2022	\$	14,351.49
2303735	1000001124	Open	OC	55	11/30/2022		
2304716	1000001124	Open	IN	49	12/6/2022	\$	14,351.49
2304716	1000001124	Open	OC	24	12/31/2022		
2305628	1000001124	Open	IN	18	1/6/2023	\$	14,351.49
Total Base Rent Due						\$	494,761.25

Exhibit 4: Analysis of Recent Mutual Terminations

Exhibit 1: Termination Agreement Comparison

Alioto Termination Agreement (restaurant premises, proposed agreement)	Amount	Ferry Plaza Termination Agreement (21-0560)	Amount
Unpaid Rent (March 2020-April 2022)	(\$609,719)	Unpaid rent (Jan 2021 to July 2021)	(\$111,432)
Security Deposit	18,385	Security Deposit	222,864
Termination Fee to Port	200,000	Termination Fee to Port	0
Site Improvement Costs ¹	(350,000)	Site Improvement Costs	(709,000)
Net Fiscal Impact to Port	(\$741,334)	Net Fiscal Impact to Port	(\$597,566)
Annual Base Rent	\$255,256	Annual Base Rent	\$222,864
Remaining Base Rent (through 2036)	\$3,531,041	Remaining Base Rent (through 2040)	\$4,122,984

Source: Files 21-0560 and 22-0438

Lou's Pier 47 ¹	Amount
Unpaid Rent (March 20-February 23)	(\$556,083)
Security Deposit ²	\$0
Termination Fee	\$200,000
Site Improvement Costs ³	(\$317,000)
Net Fiscal Impact	(\$673,083)
Personal Property (TT estimate)	\$92,000
Fiscal Impact after PP	(\$581,083)
Annual Base Rent	\$181,765
Remaining Rent (through 2025)	\$545,026

Notes:

1. Pending Mutual Termination
2. Security Deposit of \$42,631 applied Dec-2022
3. Potential cost if Port needs to refurbish the premises. Based on estimates from brokers.

Pompei's Grotto	Amount
Unpaid Rent (March 20-January 23)	(\$494,761)
Security Deposit Remaining ¹	\$0
Termination Fee	\$150,000
Site Improvement Costs ²	(\$300,000)
Net Cash Fiscal Impact	(\$644,761)
Personal Property (TT estimate)	\$122,000
Fiscal Impact after PP	(\$522,761)
Annual Base Rent	\$172,218
Remaining Rent (through 2036)	\$2,583,270

Notes:

1. Security deposit of \$9,634 applied Nov-22
2. Potential cost if Port needs to refurbish the premises. Based on estimates from brokers.



MEMORANDUM

April 21, 2023

TO: MEMBERS, PORT COMMISSION

Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Ed Harrington
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of a Mutual Termination Agreement with 340 Jefferson, LLC, dba Pompei's Grotto; Lease No. L-8986 and License No E-13772 for Premises at 340 Jefferson Street, SWL 302 San Francisco, CA 94111, subject to Board of Supervisor's approval.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 23-18

EXECUTIVE SUMMARY

340 Jefferson, LLC, a California limited liability company dba Pompei's Grotto ("Tenant") ceased operations in March 2020 due to the devastating financial impacts of the pandemic.¹ Business and convention travelers and international tourism have not returned to pre-pandemic levels and the Tenant claims to be unable to profitably operate citing unaffordable start-up costs, difficulty hiring personnel, and lack of customers. Port staff is proposing to enter a mutual termination agreement as described in this memorandum.

As of January 24, 2023, the Tenant owes the Port \$495,000 (after application of security deposit to the balance due) in past due rent.² Note the Lease does not give the Port the

¹ See attached "Profit and Loss – Detail" provided by the Tenant for CY 2019 through 2021.

² See attached L-8986 ledger provided by the Port's accounting supervisor. Base rent is \$14,351/month and will continue to accrue after January 24, 2023.

authority to charge interest. As part of the mutual termination, Tenant would, among other things, (i) pay Port (a) a lump-sum \$150,000 termination fee and (b) \$2,800 to reimburse Port for costs to board up the entry alcove at the leased premises with Tenant's approval, and (ii) Port would keep all the personal property in the premises (e.g. restaurant equipment, furniture, etc.), reported by Tenant to be valued at \$122,000³ in exchange for the Port waiving \$345,000 in past due rent through January 24, 2023. Rent accruing from January 25, 2023, through date of full approval by the Board of Supervisors is also proposed to be waived. Tenant's Lease expires April 20, 2036.

Tenant failed to make base rent payments during the pandemic. Tenant did not qualify for 14 months of base rent forgiveness (which would have totaled about \$197K in forgiveness) under the Port's standard rent relief program because it was not in good standing due to its failure to open under the terms of the rent relief program.

Port staff recommend approval of the proposed termination agreement considering similar termination agreements Port has entered with other Port restaurant tenants.⁴ As proposed, this termination agreement would allow the Port to regain possession of a Port property in relatively good condition (located on land on Jefferson Street, thus no substructure maintenance issues). Port staff believe the Port's interests are best served by regaining possession of the property and re-leasing it as quickly as possible.

BACKGROUND

340 Jefferson (Pompei's Grotto) is in the heart of the Fisherman's Wharf Historic Fish Alley District.⁵ The restaurant offered fresh local seafood and Italian cuisine and outdoor dining. The site continuously operated as a restaurant from 1946 until the start of the pandemic.

On March 12, 1975, the Port entered into a sixty-one-year lease with Pompei Enterprises Corp. for the operation of a restaurant and entertainment venue. On February 17, 2005, Port and Pompei Enterprises Corp. entered a companion Sidewalk Encroachment Permit Revocable License E-13772 for the plaza in front of the restaurant. The Lease and License were assigned from Pompei Enterprises Corp. to 340 Jefferson, LLC on April 28, 2015. The Port consented to this assignment in June 2015.

Tenant advises there are no recorded loans or mortgages in place. Discussions with the Tenant determined that Tenant obtained two Paycheck Protection Program loans and one Economic Injury Disaster Loan, but since the Tenant did not reopen for business the loans are required to be repaid. One PPP loan has been repaid and Tenant and Garrett Meyers personally will represent and warrant in the Mutual Termination Agreement that the two

³ Tenant represents that the value of the items in the property transferred to the Port is approximately \$122,000. Port staff have not independently verified that value; however, the items listed by Tenant do appear to have some value. Port staff additionally believes that there is real value in not having to go through the delay and significant layout of hard dollar costs and staff time by Port staff to go through a complete inventory and auction process that would be required if the personal property were to be abandoned by the Tenant.

⁴ See attached "Analysis of Recent Terminations".

⁵ See attached location map.

remaining loans are personal to Garrett Meyers, not recorded against the premises, and will fully defend and indemnify the Port if the lender (SBA) records liens against the property or otherwise pursues the Port for payment or other resolution of the loans. The Port will not be releasing any claims related to these loans as part of the Lease termination.

Failure to Pay Rent

Because of the COVID pandemic and the loss of customers, the Tenant stopped paying rent as of March 1, 2020. Under the Lease and terms of the rent relief program, Tenant was obligated to pay base rent or percentage rent, whichever was more, and be open at least 10 days per month. Tenant has no plans to reopen, citing unaffordable start-up costs, difficulty hiring personnel, and a lack of customers. Failure to open has also breached several terms of the Lease.

PROPOSED TERMS OF AGREEMENT

Port staff propose to accept a \$150,000 termination fee on the following terms to resolve outstanding issues under the Lease and the License, including the litigation threatened by Port against Tenant:

1. Lease No. L-8986 and License No. E-13772 will be simultaneously terminated.
2. Subject to Port's discretion, most Tenant personal property and fixtures to remain on the premises, and title will be transferred to Port via Bill of Sale.
3. The Port will waive all accrued rent outstanding under the Lease and the License through the effective date of the termination agreement, which date will be after final approval of the termination agreement from the Board of Supervisors.
4. Tenant to allow Port to pursue back rent due through Tenant's insurance policies.
5. Tenant to indemnify Port for any claims related to the Paycheck Protection Act and other emergency loans.
6. Tenant will replace any broken glass in the premises and maintain the premises until the termination is final.
7. Tenant will remove exterior signage at its own cost or Tenant may request Port to remove the signage at a cost of \$3,500, which amount must be paid before the effective date of the termination agreement.
8. Tenant will remove the door providing access to storage space in adjacent Crab Boat Owner's Association premises and replace with like-kind wall materials before the lease termination date and provide a release of claims for the benefit of Port and City parties from the Crab Boat Owners Association ("**CBOA**") for the removal of the door and Tenant leaving the storage space in CBOA's premises.

STAFF ANALYSIS AND DISCUSSION

It is in the Port's best interest to enter into the proposed termination agreement as opposed to initiating litigation to recover sums owed and regain possession of the premises. Under the proposed termination agreement, Port is guaranteed recovery of a portion of the outstanding sums owed to Port, and Port staff believes, in consultation with the City Attorney, that this is the fastest way to regain possession of the premises. The termination agreement has been structured to minimize the amount of time it will take for Port to regain the premises, for example, by obviating the need to inventory and auction any personal property remaining in the space. Litigation, on the other hand, will require Port to expend potentially significant costs, including attorneys' fees, without a guarantee that Port will recoup those costs or the outstanding amounts owed by Tenant. Litigation will most likely also delay return of the premises to the Port beyond the date contemplated in the termination agreement including the potential of needing to litigate in Bankruptcy Court, where Port may receive significantly less than the \$150,000 currently offered. The premises are in good condition and a new operator has the option of operating almost immediately and can avoid major tenant improvement costs and construction downtime. In addition, the site and its closed, next-door neighbor (D&G Company – Lou's Pier 47) have experienced increasing vandalism and property damage. It is clear this Tenant does not have a plan or means to operate. Regaining possession and working towards a new lease is important to improve the overall Fisherman's Wharf visitor experience.

Port Maintenance staff inspected the premises twice and found minor deferred maintenance items such as tile needing grout, missing ceiling tiles, the need to install GFI outlets, and other similar items. Port maintenance staff determined these were minor wear and tear items and can be addressed by the next tenant to take possession.

For many months, Tenant stated that it could not provide any termination fee whatsoever and demanded Port forgive all accrued rent. After Port threatened litigation, Tenant offered \$50,000 as the sum total of costs. After further litigation threats, Tenant agreed to pay \$150,000 as its last, best, and final offer. Port negotiators believe the \$150,000 termination fee is the most the Tenant will agree to pay because multiple attempts to increase the fee, even marginally to \$175,000, were not successful. To compensate for this fee, Port negotiated to receive the property remaining in the premises (which may help a new tenant and will avoid the loss of time and cost of auctioning such property) and the ability to pursue insurance for back rent.

In summary, staff believes that the proposed terms are beneficial to the Port as:

1. The termination fee of \$150,000 represents 30% of the base rent balance due as of January 24, 2023 and is a significant increase over the \$0 that Tenant had long insisted it could pay;
2. Port will retain all personal property in the restaurant. Tenant estimated value is \$122,000 - approximately 25% of the base rent due;
3. Port would obtain possession of Premises promptly and avoid potentially lengthy and costly litigation;

4. Possession will allow the Port to solicit and re-lease the Premises and generate revenue significantly faster than going through further negotiations to increase the potential termination fee and an unlawful detainer action to re-take the premises (which could take many months); and,
5. The Premises are ready for a new restaurant tenant subject to minimal required improvements to start operations.

Alternatives to negotiating a mutual termination agreement to resolve these issues include:

1. Send the Tenant a 3-day notice to pay rent or quit and pursue an unlawful detainer action should Tenant not pay or vacate. An unlawful detainer action limits recovery to the past 12 months of rent to total approximately \$172,200 (as of January 2023). This process would likely take more than six months and could reasonably be expected to take more than a year. Port would need to initiate a separate civil action against Tenant to recover the remaining outstanding amounts owed to Port that are not covered by the unlawful detainer action. Such a suit would be unlikely to conclude in less than two years if it were to go to trial.
2. Tenant may abandon the premises. Significant Port and legal resources would then be needed to manage the abandonment.
3. Tenant may file for bankruptcy, making pursuit of the balance due more complicated and may result in little or no recovery (depending on Port's priority among other creditors).

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing the Executive Director to enter into the proposed Mutual Termination Agreement with 340 Jefferson, LLC, a California limited liability company, and authorize the Executive Director to forward the Mutual Termination Agreement to the Board of Supervisors for approval and upon the effectiveness of such approval, authorize the Executive Director or designee to execute the Mutual Termination Agreement.

Prepared by: Don Kavanagh, Senior Property Manager

For: Rebecca Benassini, Deputy Director
Real Estate and Development

Exhibits Exhibit 1: Site Location and Photo
Exhibit 2: Tenant Profit and Loss Statement
Exhibit 3: Tenant Ledger
Exhibit 4: Review of Similar Transactions

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 23-18

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I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 25, 2023.

Secretary

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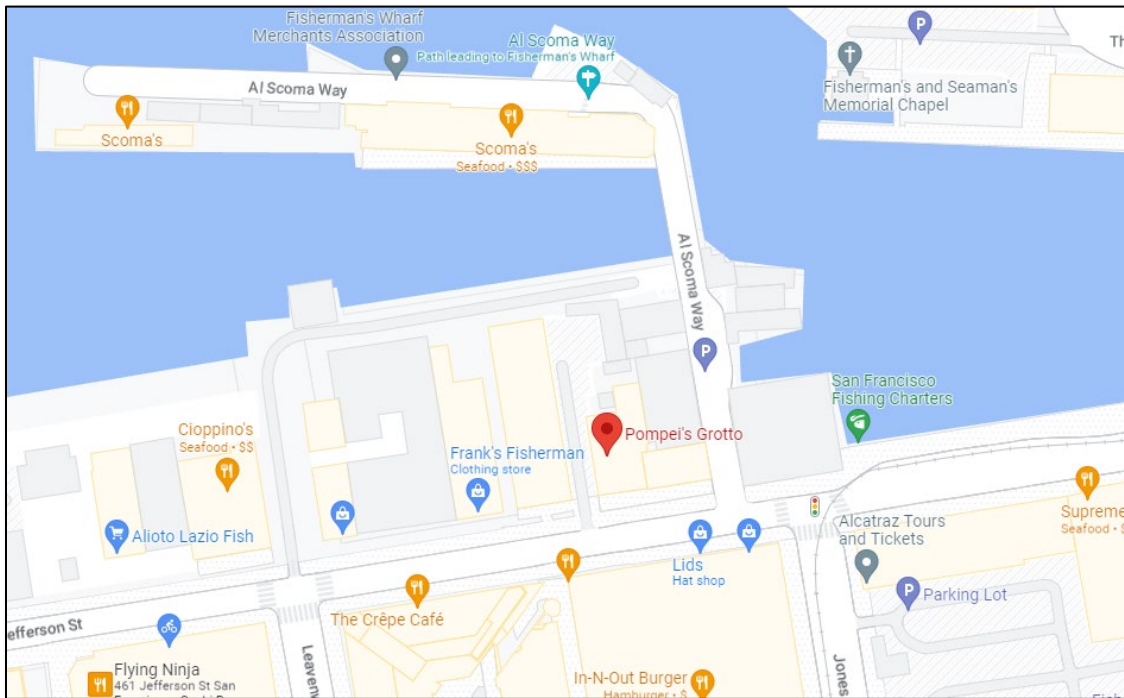


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340 Jefferson, LLC

L-8986

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2100003	1000001124	Open	IN	932	7/6/2020	\$ 10,829.54
2100003	1000001124	Open	OC	876	8/31/2020	
2100792	1000001124	Open	IN	901	8/6/2020	\$ 10,829.54
2100792	1000001124	Open	OC	876	8/31/2020	
2101668	1000001124	Open	IN	870	9/6/2020	\$ 10,829.54
2101668	1000001124	Open	OC	846	9/30/2020	
2102460	1000001124	Open	IN	840	10/6/2020	\$ 10,829.54
2102460	1000001124	Open	OC	815	10/31/2020	
2103335	1000001124	Open	IN	809	11/6/2020	\$ 10,829.54
2103335	1000001124	Open	OC	785	11/30/2020	
2104422	1000001124	Open	IN	779	12/6/2020	\$ 10,829.54
2104422	1000001124	Open	OC	754	12/31/2020	
2105059	1000001124	Open	IN	748	1/6/2021	\$ 10,829.54
2105059	1000001124	Open	OC	723	1/31/2021	
2105899	1000001124	Open	IN	717	2/6/2021	\$ 10,829.54
2105899	1000001124	Open	OC	695	2/28/2021	
2106660	1000001124	Open	IN	689	3/6/2021	\$ 10,829.54
2106660	1000001124	Open	OC	664	3/31/2021	
2107703	1000001124	Open	IN	658	4/6/2021	\$ 10,829.54
2107703	1000001124	Open	OC	634	4/30/2021	
2108279	1000001124	Open	IN	628	5/6/2021	\$ 10,829.54
2108279	1000001124	Open	OC	603	5/31/2021	
2109108	1000001124	Open	IN	584	6/19/2021	\$ 444.00
2109108	1000001124	Open	OC	573	6/30/2021	
2109119	1000001124	Open	IN	597	6/6/2021	\$ 10,829.54
2109119	1000001124	Open	OC	573	6/30/2021	
2200003	1000001124	Open	IN	567	7/6/2021	\$ 10,829.54
2200003	1000001124	Open	OC	542	7/31/2021	
2200773	1000001124	Open	IN	536	8/6/2021	\$ 10,829.54
2200773	1000001124	Open	OC	511	8/31/2021	
2201569	1000001124	Open	IN	505	9/6/2021	\$ 10,829.54
2201569	1000001124	Open	OC	481	9/30/2021	
2202428	1000001124	Open	IN	475	10/6/2021	\$ 10,829.54
2202428	1000001124	Open	OC	450	10/31/2021	

Tenant Ledger
As of January 24, 2023
(Continued)

340 Jefferson, LLC

L-8986

Balance as of 01/24/23

2203259	1000001124	Open	IN	444	11/6/2021	\$	10,829.54
2203259	1000001124	Open	OC	420	11/30/2021		
2204212	1000001124	Open	IN	414	12/6/2021	\$	10,829.54
2204212	1000001124	Open	OC	389	12/31/2021		
2205125	1000001124	Open	IN	383	1/6/2022	\$	10,829.54
2205125	1000001124	Open	OC	358	1/31/2022		
2205969	1000001124	Open	IN	352	2/6/2022	\$	10,829.54
2205969	1000001124	Open	OC	330	2/28/2022		
2206922	1000001124	Open	IN	324	3/6/2022	\$	10,829.54
2206922	1000001124	Open	OC	299	3/31/2022		
2207828	1000001124	Open	IN	293	4/6/2022	\$	10,829.54
2207828	1000001124	Open	OC	269	4/30/2022		
2208759	1000001124	Open	IN	263	5/6/2022	\$	10,829.54
2208759	1000001124	Open	OC	238	5/31/2022		
2209656	1000001124	Open	IN	230	6/8/2022	\$	444.00
2209656	1000001124	Open	OC	208	6/30/2022		
2210163	1000001124	Open	IN	232	6/6/2022	\$	10,829.54
2210163	1000001124	Open	OC	208	6/30/2022		
2300004	1000001124	Open	IN	202	7/6/2022	\$	10,829.54
2300004	1000001124	Open	OC	177	7/31/2022		
2300784	1000001124	Open	IN	171	8/6/2022	\$	10,829.54
2300784	1000001124	Open	OC	146	8/31/2022		
2301755	1000001124	Open	IN	140	9/6/2022	\$	14,351.49
2301755	1000001124	Open	OC	116	9/30/2022		
2302558	1000001124	Open	IN	116	9/30/2022	\$	102,136.55
2302558	1000001124	Open	OC	85	10/31/2022		
2302559	1000001124	Open	IN	116	9/30/2022	\$	4,717.27
2302559	1000001124	Open	OC	85	10/31/2022		
2302709	1000001124	Open	IN	110	10/6/2022	\$	14,351.49
2302709	1000001124	Open	OC	85	10/31/2022		
2303735	1000001124	Open	IN	79	11/6/2022	\$	14,351.49
2303735	1000001124	Open	OC	55	11/30/2022		
2304716	1000001124	Open	IN	49	12/6/2022	\$	14,351.49
2304716	1000001124	Open	OC	24	12/31/2022		
2305628	1000001124	Open	IN	18	1/6/2023	\$	14,351.49
Total Base Rent Due						\$	494,761.25

Exhibit 4: Analysis of Recent Mutual Terminations

Exhibit 1: Termination Agreement Comparison

Alioto Termination Agreement (restaurant premises, proposed agreement)	Amount	Ferry Plaza Termination Agreement (21-0560)	Amount
Unpaid Rent (March 2020-April 2022)	(\$609,719)	Unpaid rent (Jan 2021 to July 2021)	(\$111,432)
Security Deposit	18,385	Security Deposit	222,864
Termination Fee to Port	200,000	Termination Fee to Port	0
Site Improvement Costs ¹	(350,000)	Site Improvement Costs	(709,000)
Net Fiscal Impact to Port	(\$741,334)	Net Fiscal Impact to Port	(\$597,566)
Annual Base Rent	\$255,256	Annual Base Rent	\$222,864
Remaining Base Rent (through 2036)	\$3,531,041	Remaining Base Rent (through 2040)	\$4,122,984

Source: Files 21-0560 and 22-0438

Lou's Pier 47 ¹	Amount
Unpaid Rent (March 20-February 23)	(\$556,083)
Security Deposit ²	\$0
Termination Fee	\$200,000
Site Improvement Costs ³	(\$317,000)
Net Fiscal Impact	(\$673,083)
Personal Property (TT estimate)	\$92,000
Fiscal Impact after PP	(\$581,083)
Annual Base Rent	\$181,765
Remaining Rent (through 2025)	\$545,026

Notes:

1. Pending Mutual Termination
2. Security Deposit of \$42,631 applied Dec-2022
3. Potential cost if Port needs to refurbish the premises. Based on estimates from brokers.

Pompei's Grotto	Amount
Unpaid Rent (March 20-January 23)	(\$494,761)
Security Deposit Remaining ¹	\$0
Termination Fee	\$150,000
Site Improvement Costs ²	(\$300,000)
Net Cash Fiscal Impact	(\$644,761)
Personal Property (TT estimate)	\$122,000
Fiscal Impact after PP	(\$522,761)
Annual Base Rent	\$172,218
Remaining Rent (through 2036)	\$2,583,270

Notes:

1. Security deposit of \$9,634 applied Nov-22
2. Potential cost if Port needs to refurbish the premises. Based on estimates from brokers.



May 19, 2023

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Dear Ms. Calvillo:

Attached please find an electronic copy a proposed Resolution for Board of Supervisors consideration, to approve a mutual termination agreement between the Port of San Francisco and 340 Jefferson, LLC dba Pompei's Grotto for Lease No. L-8986 and License No. E-13772.

The following is a list of accompanying documents

- Resolution approving mutual termination agreement
- Draft mutual termination agreement
- Port Commission staff report and resolution approving the mutual termination agreement

The following person may be contacted regarding this matter:

Boris Delepine, Legislative Affairs Manager
415-571-6626
Boris.Delepine@sfport.com

Sincerely,

Boris Delepine