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 $122,000 [3] 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

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[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:

Jenica Liu

Secretary

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Exhibit 1: Site Location and Photo

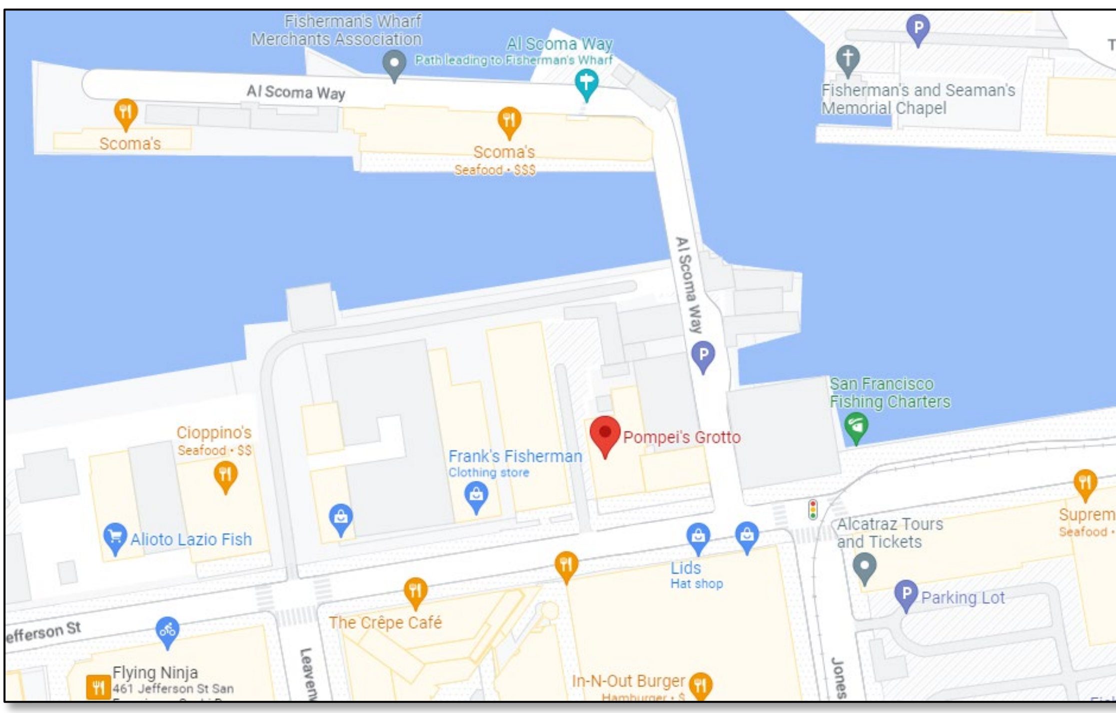

Exhibit 2: Tenant Profit and Loss Detail

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	$	[illegible],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	
2008564	1000001124	Open	IN	1033	3/27/2020	$ 10.00
2008564	1000001124	Open	OC	876	8/31/2020	
2008732	1000001124	Open	IN	1023	4/6/2020	$ 10,829.54
2008732	1000001124	Open	OC	876	8/31/2020	
2009642	1000001124	Open	IN	993	5/6/2020	$ 10,829.54
2009642	1000001124	Open	OC	876	8/31/2020	
2010401	1000001124	Open	IN	962	6/6/2020	$ 10,829.54
2010401	1000001124	Open	OC	876	8/31/2020	
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	222,865
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.