

**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: _____