

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.

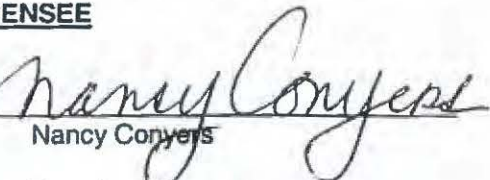
PORT

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

By: 
Monique Moyer
Executive Director

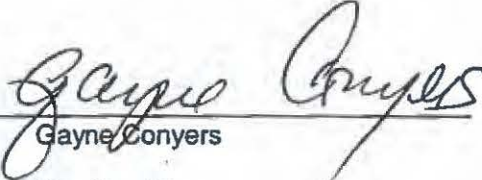
Dated: 5/14/05

LICENSEE

By: 
Nancy Conyers

Its: Secretary-Treasurer

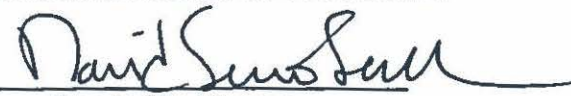
Date: 3-3-05

By: 
Gayne Conyers

Its: Vice President

Date: 3-3-05

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

By: 
Deputy City Attorney

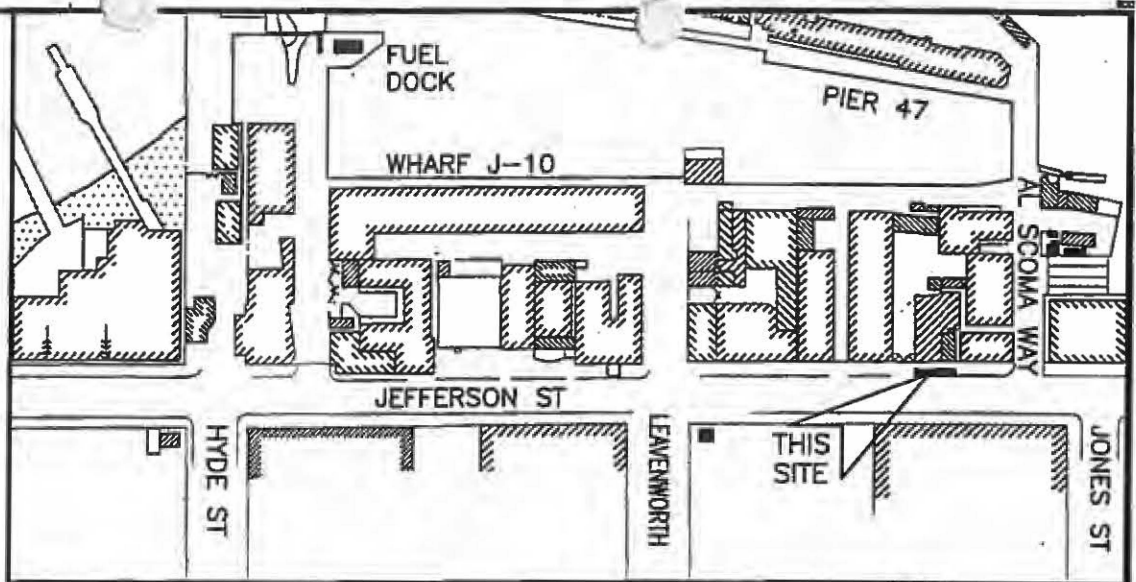
Permit Prepared By: Claudia Davison, Property Manager cd (Initials)

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
PLATE CODE NO. 4004-00
SHEET NO. OF SHEETS



LOCATION PLAN
NO SCALE

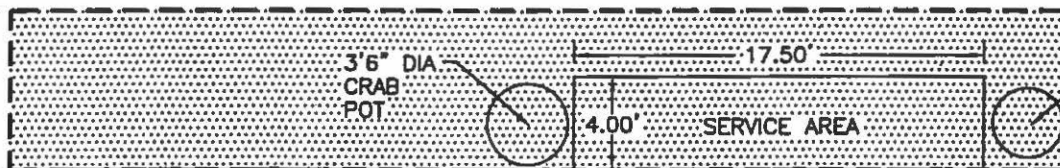
POMPEI'S GROTTO
340 JEFFERSON STREET

LOU'S
RESTAURANT

7.00'

GENERAL PEDESTRIAN SIDEWALK AREA

6.86'



3' DIA
ICE
BUCKET

BACK OF CURB
EDGE OF ROAD

45.22'

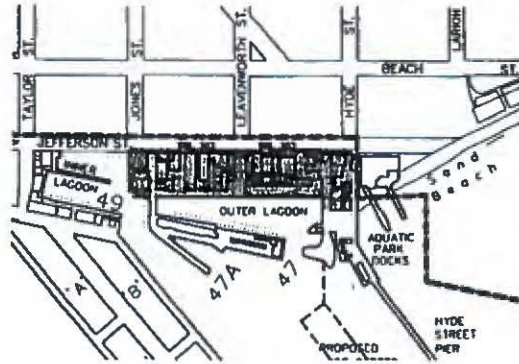
POMPEI ENTERPRISES CORPORATION
SIDEWALK ENCROACHMENT PERMIT
AREA = 310.2 Sq Ft

EXHIBIT A

INITIALS: PORT: *cd* TENANT: *[Signature]* DATE: 3/3/05

Design Criteria

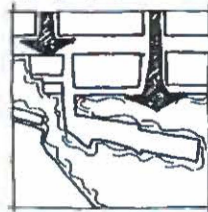
SEAWALL LOTS 302 & 303 (Fish Alley Area)



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.

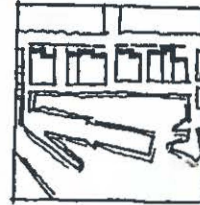


MASSING: The footprint of new development and additions to existing buildings along Jefferson Street should extend the width of the lot with no side setbacks so that the continuity of the street facade wall is maintained.

Scale



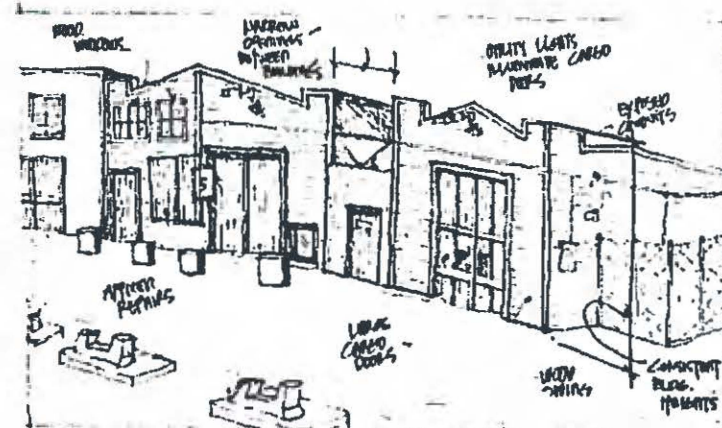
SCALE: Appreciate the scale that the typical building heights of neighboring buildings contribute to the character of the streetscape by holding new development to two stories or less.



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

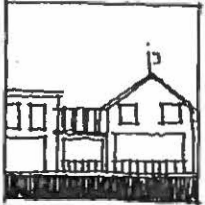
SEAWALL LOTS 302 & 303

-- Continued from previous page --

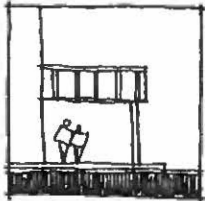
Architectural Details



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

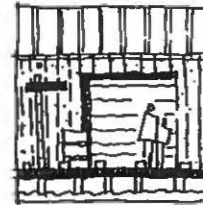


MATERIALS: Varying building materials between existing buildings and additions is encouraged to visually distinguish new from old.

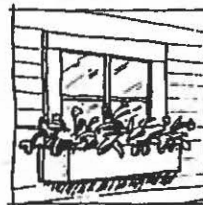
MATERIALS: New development and additions should be constructed with simple, industrial materials that typify those found throughout Fish Alley.



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.

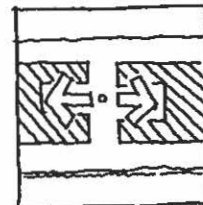


SITE FURNISHINGS: Site furnishings and landscaping should be kept minimal and simple, and should reflect the industrial and maritime character of the Fish Alley Area.



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