

File No. 131092

Committee Item No. 1

Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 12/11/2013

Board of Supervisors Meeting

Date: December 17, 2013

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Victor Young

Date December 6, 2013

Completed by: Victor Young

Date 12/12/13

1 [Lease Termination Agreement - Literacy for Environmental Justice - Lease No. L-13816 -
2 EcoCenter]

3 **Resolution authorizing the Mutual Termination Agreement between the Port of**
4 **San Francisco (Port) and Literacy for Environmental Justice for Lease No. L-13816,**
5 **for the EcoCenter at Heron's Head Park, located at Jennings and Cargo Way, pending**
6 **Board approval.**

7
8 WHEREAS, Charter Section B3.581 empowers the Port Commission with the
9 authority and duty to use, conduct, operate, maintain, manage, regulate and control lands
10 within Port's jurisdiction; and,

11 WHEREAS, The Port and Literacy for Environmental Justice, a California corporation,
12 entered into a ten-year lease, dated September 27, 2005, for reference purposes only for the
13 2,292 square-foot building located within Heron's Head Park, known as "the EcoCenter at
14 Heron's Head Park" (Port Lease No. L-13816 (Lease)) which was approved by Port
15 Commission Resolution Nos. 05-64 and 07-63 and Board of Supervisors Resolution Nos.
16 60-06 and 553-07; and,

17 WHEREAS, Port and Literacy for Environmental Justice now desire to terminate the
18 Lease; and,

19 WHEREAS, On October 8, 2013, the Port Commission adopted Resolution No. 13-39
20 authorizing the Executive Director of the Port to execute the negotiated Mutual Termination
21 Agreement between the Port and Literacy for Environmental Justice setting forth the terms
22 of the mutual termination, which Resolution and Agreement is on file with the Clerk of the
23 Board of Supervisors in File No. 131092, which is hereby declared to be a part of this
24 Resolution as if set forth fully herein; now, therefore, be it
25

1 RESOLVED, That the Board of Supervisors authorizes the Executive Director of the
2 Port to terminate the Lease on a form approved by the City Attorney and in substantially the
3 form of the Mutual Termination Agreement on file with the Clerk of the Board of Supervisors;
4 and, be it

5 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
6 Director of the Port to enter into any additions, amendments or other modifications to the
7 Mutual Termination Agreement (including, without limitation, preparation and attachment of,
8 or changes to, any or all of the exhibits and ancillary agreements) that the Executive
9 Director, in consultation with the City Attorney, determines when taken as a whole, are in the
10 best interest of the Port, do not materially increase the obligations or liabilities of the Port or
11 City or materially decrease the public benefits accruing to the Port, and are necessary or
12 advisable to complete the transactions contemplated and effectuate the purpose and intent
13 of this Resolution, such determination to be conclusively evidenced by the execution and
14 delivery by the Executive Director of any such documents; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors approves and ratifies all prior
16 actions taken by the officials, employees and agents of the Port Commission or the City with
17 respect to the Mutual Termination Agreement; and, be it

18 FURTHER RESOLVED, That within thirty (30) days of the Mutual Termination
19 Agreement being fully executed by all parties, the Port shall provide the final Mutual
20 Termination Agreement to the Clerk of the Board for inclusion into the official file.
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Item 1 File 13-1092	Department: Port
EXECUTIVE SUMMARY	
Legislative Objectives	
<ul style="list-style-type: none"> The proposed resolution would authorize a Mutual Termination Agreement between the Port and Literacy for Environmental Justice (LEJ), a nonprofit organization, for the existing lease on the EcoCenter at Heron's Head Park. 	
Key Points	
<ul style="list-style-type: none"> In 1998, the Port constructed Heron's Head Park to include eight acres of wetland habitat and 14 acres of open space. In 2001, Literacy for Environmental Justice (LEJ), a nonprofit organization received grants totaling \$1,298,000 from the City's Department of Environment and the State's Coast Conservancy to construct an EcoCenter at Heron's Head Park. On February 3, 2006, the Board of Supervisors approved a ten-year ground lease between the Port and LEJ, for LEJ to construct, occupy and maintain at LEJ's expense an EcoCenter at Heron's Head Park from December 7, 2007 through December 6, 2017. Since 2010, when LEJ opened the EcoCenter, LEJ has experienced financial and related staffing problems and, as a result, the LEJ is unable to operate, maintain and program the EcoCenter as originally envisioned. Therefore, LEJ has requested that the Port terminate the existing lease for the EcoCenter and Heron's Head Park. On September 24, 2013, the Port Commission authorized Port staff to issue a Request for Proposals to re-lease the EcoCenter, contingent upon termination of the subject LEJ lease. The Port received two qualified responses. Port staff anticipates the Port Commission will take action regarding the most qualified respondent to re-lease the EcoCenter on January 14, 2014, which would not be subject to Board of Supervisors approval. 	
Fiscal Impact	
<ul style="list-style-type: none"> To date, LEJ has not paid any rent to the Port because authorized rent credits totaling \$53,477 were greater than the \$5,500 annual rent that LEJ was required to pay the Port since the lease commenced on December 7, 2007. However, LEJ paid \$68,000 in deposit and fee revenues to the Port, all of which will be retained by the Port. Upon termination of the subject lease, ownership of the EcoCenter will revert to the Port. LEJ spent more than \$1.5 million to design, permit, and construct the existing EcoCenter. The annual cost for the Port to operate and maintain the EcoCenter will be approximately \$111,500. 	
Recommendation	
<ul style="list-style-type: none"> Approve the proposed resolution. 	

- \$48,000 Capital Improvement Fee and \$15,000 Removal of Tenant Improvement Fee paid by LEJ to Port prior to commencement of lease; and
- Materialman's Completion Bond secured by LEJ, issued by a surety company, in amount not less than the construction contract bid.

On October 22, 2007, the Board of Supervisors approved a resolution authorizing an addendum to the lease with LEJ to remove the requirement that LEJ obtain a Materialman's Completion Bond as it was not commercially available for this project (File 07-1310; Resolution 553-07).

LEJ completed construction of the EcoCenter in Heron's Head Park in 2010. The EcoCenter is an approximately 2,300 square foot building, constructed as a demonstration project to showcase green building technologies, comprised of an open meeting room, two small offices and utility rooms, two restrooms, an adjacent wastewater treatment facility and a vegetated roof. The EcoCenter is entirely solar-powered with no back-up connection to an outside electrical system. The wastewater treatment and solar power systems as well as the vegetated roof require skilled operation, maintenance and monitoring. The EcoCenter and Heron's Head Park are used for environmental education, sustainability coursework, wildlife habitat, bird watching, public outreach and passive recreation purposes.

According to Ms. Carol Bach, the Port's Environmental and Regulatory Affairs Manager, since 2010, when LEJ opened the EcoCenter, LEJ has experienced financial and related staffing problems. Ms. Bach notes that the founding Executive Director of LEJ departed at the end of 2005, after which the LEJ had three consecutive Executive Directors, the last of which was laid off in 2011 and has not been replaced. In addition, the financial downturn of the economy in 2009 impacted LEJ's fundraising abilities significantly, and, as a result, the LEJ is unable to operate, maintain and program the EcoCenter as originally envisioned. Ms. Bach advises that, at this time, LEJ wishes to invest its limited personnel and resources into its native plant nursery and habitat restoration at Candlestick Point State Park, rather than continuing to operate the EcoCenter in Heron's Head Park.

As a result, LEJ has requested that the Port terminate the existing lease and license agreements for the EcoCenter and Heron's Head Park. On October 8, 2013, the Port Commission authorized the Executive Director of the Port to execute a Mutual Termination Agreement with LEJ (Port Resolution No. 13-39).

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize a Mutual Termination Agreement between the Port and Literacy for Environmental Justice (LEJ), a nonprofit organization, for the existing lease on the EcoCenter at Heron's Head Park.

advises that LEJ spent more than \$1.5 million to design, permit, and construct the existing EcoCenter and related facilities.

Upon termination of the subject lease, the cost to operate and maintain the existing EcoCenter will also revert to the Port. Ms. Bach estimates the annual operating and maintenance costs will be approximately \$111,500 per year, with most of the work performed by Port staff.

In addition, Ms. Bach notes that the Port has funded various environmental education programs at Heron's Head Park since the Park opened in 1999. Such environmental education and related public programs have been provided through a variety of organizations, including work orders with San Francisco City College's Center for Habitat Restoration, use of temporary Port staff, contracts with LEJ, and work orders with the Youth Stewardship Program in the City's Recreation and Park Department, which are currently ongoing. The Port's FY 2013-14 budget includes approximately \$110,000 for public programming and facilities maintenance at the EcoCenter and Heron's Head Park, and \$68,000 funded through work orders with RPD.

RECOMMENDATION

Approve the proposed resolution.

**MUTUAL TERMINATION AGREEMENT
(LEASE L-13816 AND RELATED AGREEMENTS)**

This Mutual Termination Agreement (this "**Agreement**"), dated for reference purposes only as of [Insert Board of Supervisors approval date] is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating through the SAN FRANCISCO PORT COMMISSION ("**Port**"), as landlord, and Literacy for Environmental Justice, a California corporation, as tenant ("**Tenant**").

RECITALS

A. Port and Tenant entered into Port Lease No. L-13816 dated as of September 27, 2005 for reference purposes only, as revised by an Addendum to the Lease (together, the "**Lease**"), for that certain real property located at Heron's Head Park as more particularly described in the Lease (the "**Premises**") for a 10-year term ending on December 6, 2017. The Lease and Addendum were approved by Port Commission Resolution Nos. 05-64 and 07-63 and Board of Supervisors Resolution Nos. 60-06 and 553-07. Port and Tenant have entered into other agreements regarding the use of the Premises, including License No. 14831 for installation of a potable water supply line (the "**License**") and an Agreement Protecting the Public Interest in Certain Improvements and Development dated July 16, 2008 with the Port and California State Coastal Conservancy ("**SCC**") and a Letter Agreement Regarding Mayor's Office of Housing Division of Community Development Funding for Improvements at The EcoCenter at Heron's Head Park dated February 16, 2010 with the Port and the Mayor's Office of Housing, Division of Community Development ("**MOCD**") (the other agreements collectively, the "**Related Agreements**").

B. Tenant secured funding from the City and County of San Francisco Department of the Environment, the SCC, the MOCD, and other public and private sources to construct a green building demonstration project and environmental education center at Heron's Head Park. In accordance with the Lease, the License, and the Related Agreements, Tenant constructed improvements on the Premises, including site preparation and grading, and construction of an approximately 2,292 square foot building comprised of a large general assembly room, two bathrooms, two small office/storage rooms, and an indoor wastewater treatment system.

C. Port and Tenant now desire to terminate the Lease and the License. The parties are making this change so that the Port may seek a successor building operator to operate the EcoCenter and achieve the public benefit originally intended. As material consideration for this Agreement, each party will release the other party from all obligations and potential liabilities under or related to the Lease, including the related agreements, except for any obligations that expressly survive the Lease and the License and Tenant's indemnification obligations under this Agreement.

D. Tenant is in good standing.

E. All capitalized terms used in this Agreement but not otherwise defined shall have the meaning given to them in the Lease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby mutually 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. Lease Termination and Surrender. Tenant shall surrender the Premises and all Improvements and Alterations thereon in compliance with Section 34 (Surrender and Quitclaim) of the Lease no later than 30 days after execution of this Agreement by Port ("**Termination Date**"). Port will

provide Tenant with 30 days advance written notice of the Termination Date, together with a fully executed counterpart of this Agreement, and Port and Tenant will conduct a joint exit inspection of the Premises to ensure proper surrender prior to the Termination Date.

3. Security Deposit, Capital Improvements Fee and Removal Fee. As a material part of the consideration for this Agreement, Tenant shall forfeit to Port the Security Deposit, Capital Improvements Fee and Removal Fee for the Lease. Port shall retain all such monies free of any claim by Tenant.

4. Continuing Rights and Obligations. From and after the Termination Date, neither Port nor Tenant shall have any rights or obligations to each other under the Lease or the License except for obligations that expressly survive termination or as set forth in this Agreement. Tenant acknowledges and agrees that Port may immediately lease the Premises to a new tenant or tenants in its sole discretion.

5. Tenant's Obligations.

5.1 Tenant shall, at its sole cost and expense, cooperate fully with Port in any matter that involves the termination of the Lease and the License, such as obligations under the Related Agreements, surrender of the Premises, provision of documents and reports, appearances before decision-making bodies and the like.

5.2 Tenant acknowledges that it received funding for construction of the EcoCenter and the activities conducted under the Lease, the License, and the Related Agreements from various third party funders, including but not limited to those listed in Recital B. With respect to such third party funders, Tenant shall, at its sole cost, fully cooperate with all efforts by the SCC, MOCD, and Port to identify a new tenant for the Premises under the Related Agreements.

5.3 Tenant shall indemnify, protect, defend, and hold harmless forever ("**Indemnify**" or "**Indemnification**") Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and, if requested, shall defend them, without cost to the Indemnified Parties, against any and all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief direct or vicarious liability, damage, injury or loss ("**Claims**") directly or indirectly by any third party arising out of the Lease, License, the Related Agreements, or this Agreement regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Agreement 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 Agreement. The Indemnification obligations of Tenant set forth in this Agreement include all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Agreement shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Agreement, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such Claim is tendered to Tenant by the Indemnified Parties and shall continue at all times thereafter until resolved.

6. Tenant's Waiver. As a material part of the consideration for this Agreement, Tenant, on behalf of itself and its Agents, hereby fully and irrevocably releases, discharges, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, Port, or any and all of Port's Agents with respect to any and all Claims of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the Lease, the License, the Related Agreements, or this Agreement. Tenant acknowledges that the parties are entering into this Agreement at its request, that it is not being displaced from the Premises by any action of Port and, therefore, that Tenant is not entitled to relocation benefits under any statute or law providing for relocation benefits and waives any claims for relocation benefits in relation to the Lease and the License.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to the Claims released in this Agreement, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASE MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE RELEASE AT THE TIME THIS AGREEMENT WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Initials: _____

Tenant

7. No Representation or Warranty by Port. Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

8. Entire Agreement. This Agreement contains all of the representations and 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 the 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.

9. 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, the License, or the Related Agreements, the terms of this Agreement shall prevail. Time is of the essence of this

Agreement. This Agreement shall be governed by the laws of the State of California. 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.

10. Effective Date. The Effective Date of this Agreement is the date of Port's execution as indicated below.

[SIGNATURES ON FOLLOWING PAGE]

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

By: _____

Susan Reynolds
Deputy Director, Real Estate

Dated: _____

TENANT: Literary for Environmental Justice, a California corporation

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Rona H. Sandler
Deputy City Attorney

Agreement Prepared By: Carol Bach, Environmental & Regulatory Affairs Manager,
Planning & Development Division ____ (Initial) and

Jeff Bauer, Senior Leasing Manager,
Real Estate Division ____ (Initial) _

Port Commission Resolution No. _____

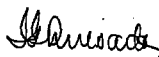
Board of Supervisors Resolution No. _____

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

RESOLUTION NO. 13-39

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control lands within Port jurisdiction; and
- WHEREAS, Port tenant, Literacy for Environmental Justice (LEJ), seeks termination of its Lease No. L-13816 for the 2,292 square-foot building located within the Port's Heron's Head Park, known as "the EcoCenter at Heron's Head Park" (the "EcoCenter") and the surrounding 6,058 non-exclusive license area, and License No. 14831 for installation of a potable water supply line to the EcoCenter; and
- WHEREAS, Both the Port and LEJ desire to terminate the Lease and License to enable the Port to lease the EcoCenter to a new tenant; and
- WHEREAS, Port staff has requested Port Commission authorization to execute a Mutual Termination Agreement with LEJ under which the Port would assume ownership of the EcoCenter and retain related deposits and fees and the parties would obtain a mutual release of claims, except for LEJ's indemnification obligations and any other provisions of the lease that expressly survive termination; now, therefore, be it
- RESOLVED, That the Port Commission authorizes staff to execute a Mutual Termination Agreement with LEJ in accordance with the terms set forth in this Memorandum to the Port Commission dated September 27, 2013 and substantially in the form on file with the Commission Secretary, and to seek final approval of the City and County of San Francisco Board of Supervisors in accordance with Charter section 9.118.

I hereby certify that the Port Commission at its meeting of October 8, 2013 adopted the foregoing Resolution.



Secretary

1 [Approval of Addendum to Port Lease for Living Classroom at Heron's Head Park]
2

3 **Resolution approving an Addendum to Lease No. 13816 with Literacy for**
4 **Environmental Justice for Construction, Maintenance, and Operation of a Living**
5 **Classroom Building at Heron's Head Park.**
6

7
8 WHEREAS, In 1998, the San Francisco Port Commission ("Port") constructed Heron's
9 Head Park (HHP), consisting of wetland habitat, upland open space, trails, interpretive signs,
10 and a fishing pier on the formerly undeveloped Pier 98; and
11

12 WHEREAS, Literacy for Environmental Justice ("LEJ"), a non-profit environmental
13 organization located in the Bayview Hunter's Point neighborhood has been operating
14 education and community/volunteer participation programs at HHP under contract to the Port
15 since 1999; and,

16 WHEREAS, In 2001, LEJ applied for a received at grant of \$898,000 from the San
17 Francisco Department of the Environment to construct at HHP the "Living Classroom", a one-
18 story, 1,450 square-foot building, incorporating sustainable design that will meet the criteria
19 for certification as a Leader in Energy and Environmental Design (the "Project") at HHP; and,

20 WHEREAS, The real property comprising HHP is within the Port's jurisdiction, and City
21 Charter Section B3.581 (g) authorizes the Port Commission to enter into leases and
22 franchises for the use of real property within Port jurisdiction; and,

23 WHEREAS, At its public meeting of September 27, 2005, the Port Commission (by
24 Resolution 05-64) approved a lease with LEJ (the "Lease") for the construction, maintenance,
25 and operation of the Project for a term of ten years; and

1 WHEREAS, At its public meeting of January 20, 2006 the Board of Supervisors (by
2 Resolution 60-06) approved the Lease and the transactions which the Lease contemplates;
3 and,

4 WHEREAS, Since Board of Supervisors' approval of the Lease, LEJ has diligently
5 worked to resolve potential permitting issues, complete construction plans, select and
6 negotiate construction contracts, and secure all insurance and bonds required of LEJ and its
7 contractors; and,

8 WHEREAS, LEJ has met all but one of the conditions precedent to lease execution:
9 the requirement to obtain a "Materialman's Completion Bond"; and,

10 WHEREAS, the Port has determined that the required completion bond is not
11 commercially available for this project because LEJ is a small non-profit organization with
12 limited assets; and,

13 WHEREAS, The Port desires to revise the lease to remove the requirement that LEJ
14 obtain a "Materialman's Completion Bond", and add new requirements regarding
15 commencement, termination, use of a third-party funds administrator, and other revisions to
16 incorporate current standard lease provisions; and,

17 WHEREAS, At its public meeting on August 14, 2007, the Port Commission approved
18 revision of Lease No. 13816 in substantially the form on file with the Clerk of the Board; now,
19 therefore, be it

20 RESOLVED, That the Board of Supervisors approves the addendum to the Lease and
21 related documents (including without limitation the terms of any exhibits and ancillary
22 agreements to the extent incorporated or referenced in the Lease) in substantially the form on
23 file with the Clerk of the Board; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
25 Director or her designee to execute all such appropriate documentation as she deems

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necessary for appropriate to implement this Resolution in a form approved by the City
Attorney's office.



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails
Resolution

File Number: 071310

Date Passed:

Resolution approving an Addendum to Lease No. 13816 with Literacy for Environmental Justice for Construction, Maintenance, and Operation of a Living Classroom Building at Heron's Head Park.

September 18, 2007 Board of Supervisors — REFERRED: Budget and Finance Committee

October 16, 2007 Board of Supervisors — ADOPTED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Chu, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 071310

I hereby certify that the foregoing Resolution was ADOPTED on October 16, 2007 by the Board of Supervisors of the City and County of San Francisco.

10/22/2007

Date Approved

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom

1 [Approval of Port Lease for Living Classroom at Heron's Head Park.]

2
3 **Resolution approving the Lease between the San Francisco Port Commission and**
4 **Literacy for Environmental Justice, a non-profit organization, for the Living Classroom**
5 **Project, located at Heron's Head Park, for a total term of ten years.**
6

7 WHEREAS, In 1998, the San Francisco Port Commission ("Port") constructed on the
8 formerly undeveloped Pier 98 Heron's Head Park ("HHPark"), consisting of approximately 8
9 acres of wetland habitat, a fishing pier and 14 acres of upland open-space with trails, picnic
10 area and interpretive signs; and

11 WHEREAS, Literacy for Environmental Justice ("LEJ"), a non-profit environmental
12 organization located in the Bayview Hunter's Point neighborhood, has been operating
13 education and community/volunteer participation programs at HHPark under contract with the
14 Port since 1999; and

15 WHEREAS, In 2001, LEJ applied for and received a grant of \$898,000 from the San
16 Francisco Department of the Environment to construct at HHPark the "Living Classroom", a
17 one-story, 1,450 square-foot building incorporating sustainable design that is expected to be
18 certified as a Leader in Energy and Environmental Design in accordance with the City's Green
19 Building Ordinance (the "Project"); and

20 WHEREAS, The real property comprising HHPark is within the Port's jurisdiction, and
21 City Charter Section B3.581 (g) authorizes the Port Commission to enter into leases and
22 franchises for the use of real property within Port jurisdiction; and

23 WHEREAS, at its public meeting in January 2001, the Port Commission (by Resolution
24 01-02) authorized and directed Port staff to negotiate a lease and other necessary
25 agreements with LEJ relating to the Project; and

1 WHEREAS, The Project is consistent with the California Public Trust Doctrine, the
2 General Plan of the City and County of San Francisco, the San Francisco Planning Code, the
3 Waterfront Land Use Plan and the Bay Conservation and Development Commission Plans;
4 and

5 WHEREAS, Pursuant to requirements under the California Environmental Quality Act
6 (CEQA), the environmental effects of the HH Park project were analyzed by the San
7 Francisco Planning Department, in a Final Negative Declaration issued November 10, 1997
8 (File No. 1997.432E) which found that, with implementation of a mitigation measure specified
9 therein, the HH Park project would not have a significant adverse effect on the environment;
10 and

11 WHEREAS, Since the issuance of the Final Negative Declaration, two Addenda have
12 been issued by the San Francisco Planning Department to analyze the environmental impacts
13 of the Living Classroom addition to the HH Park proposed by LEJ, wherein the First
14 Addendum issued on July 26, 2002 analyzed a 1,250 square foot classroom facility, and the
15 Second Addendum issued on August 16, 2005 analyzed a 1,500 square foot classroom
16 facility; and

17 WHEREAS, In both Addenda to the Final Negative Declaration, the Planning
18 Department concluded that the addition and subsequent refinement of the LEJ classroom
19 facility would not result in any new significant impacts; no substantial changes in
20 environmental circumstances have occurred since the Final Negative Declaration was issued
21 in November 1997; and no new information has come to light that would indicate the potential
22 for new significant effects not addressed in the Final Negative Declaration, and therefore no
23 supplemental environmental review is required pursuant to the San Francisco Administrative
24 Code Section 31.35(d), and no supplemental or subsequent Negative Declaration is needed
25 pursuant to CEQA Guidelines Section 15162 and 15163; and

1 WHEREAS, The San Francisco Planning Commission certified the Waterfront Land
2 Use Plan Supplemental Environmental Impact Report ("SEIR") on February 15, 2001 (File No.
3 1999.377E), which identified certain mitigation measures applicable to projects in the
4 Southern waterfront area, and which will therefore be applicable to the LEJ Living Classroom
5 project at HH Park; and

6 WHEREAS, At its public meeting of September 27, 2005, the Port Commission (by
7 Resolution 05-64) approved a lease with LEJ (the "Lease") for the construction, maintenance
8 and operation of the Project for a term of ten years, which Lease incorporates the mitigation
9 measures set forth in the SEIR and is on file with the Clerk of the Board of Supervisors in File
10 No. 060118 and hereby declared to be a part of this resolution as if set forth fully herein; and

11 WHEREAS, Charter Section 9.118 (c) requires the Board of Supervisors to approve
12 leases of real property for a period of ten or more years or having anticipated revenue to the
13 City of one million dollars or more; and

14 WHEREAS, LEJ's programs have brought thousands of youth and adults to study and
15 appreciate one of the few remaining wetlands in the City and County of San Francisco and
16 have contributed many thousands of hours of volunteer work to maintain HHPark and its
17 wetlands; and

18 WHEREAS, LEJ has demonstrated commitment and experience in providing culturally
19 relevant environmental education programs for urban youth, drawing youth directly from the
20 community that HHPark is intended to serve to participate as employees, interns and student
21 leaders; and

22 WHEREAS, The Living Classroom will be a valuable environmental resource for the
23 Bayview Hunter's Point community as well as the City and County of San Francisco; now,
24 therefore, be it

1 RESOLVED, That this Board of Supervisors has reviewed and considered the Final
2 Negative Declaration, including the Addendum, and finds that it reflects the independent
3 judgment and analysis of the Planning Department, and that it is adequate, accurate and
4 complete, and based on its review of the record, further finds that: (1) modifications
5 incorporated into the Project as a result of the lease transaction approved herein will not
6 require important revisions to the Final Negative Declaration; (2) no substantial changes have
7 occurred with respect to the circumstances under which the Project is undertaken which
8 would require major revisions to the Final Negative Declaration due to the involvement of new
9 significant environmental effects; (3) no new information of substantial importance to the
10 Project has become available which would indicate the Project will have significant effects not
11 discussed in the Final Negative Declaration; and, hereby approves the imposition on this
12 Project of mitigation measures identified in the SEIR that are generally applicable to projects
13 in the Southern Waterfront; and, be it

14 FURTHER RESOLVED, that the Board of Supervisors approves the Lease and the
15 transactions which the Lease contemplates (including without limitation the terms of any
16 exhibits and ancillary agreements to the extent incorporated or referenced in the Lease); and,
17 be it

18 FURTHER RESOLVED, that the Board of Supervisors authorizes the Executive
19 Director of the Port (the "Executive Director") to execute the Lease upon satisfaction or waiver
20 of the conditions precedent set forth in the Lease in substantially the form presented to this
21 Board and in such final form as is approved by the Executive Director in consultation with the
22 City Attorney; and, be it

23 FURTHER RESOLVED, that the Board of Supervisors authorizes the Executive
24 Director to enter into any additions, amendments or other modifications to the Lease
25 (including, without limitation, preparation and attachment of, or changes to, any or all of the

1 exhibits and ancillary agreements) that the Executive Director, in consultation with the City
2 Attorney, determines is in the best interest of the Port, do not alter the rent or the Port's
3 projected income from the Project, do not materially increase the obligations or liabilities of the
4 Port or City or materially decrease the public benefits accruing to the Port, and are necessary
5 or advisable to complete the transactions which the Lease contemplates and effectuates the
6 purpose and intent of this resolution, such determination to be conclusively evidenced by the
7 execution and delivery by the Executive Director of the Lease and any such amendments to
8 such document; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
10 Director to execute and enter into any additional documents as she deems necessary or
11 appropriate, in consultation with the City Attorney, to consummate the transactions
12 contemplated hereby or to otherwise effectuate the purpose and intent of this resolution, such
13 determination to be conclusively evidenced by the execution and delivery by the Executive
14 Director of any such documents; and, be it

15 FURTHER RESOLVED, that the Board of Supervisors approves, confirms and ratifies
16 all prior actions taken by the officials, employees and agents of the Port Commission or the
17 City with respect to this Lease.



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails
Resolution

File Number: 060118

Date Passed:

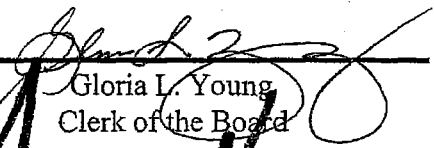
Resolution approving the Lease between the San Francisco Port Commission and Literacy for Environmental Justice, a non-profit organization, for the Living Classroom Project, located at Heron's Head Park, for a total term of ten years.

January 31, 2006 Board of Supervisors — ADOPTED

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, Mirkarimi, Peskin, Sandoval
Absent: 1 - McGoldrick

File No. 060118

I hereby certify that the foregoing Resolution was ADOPTED on January 31, 2006 by the Board of Supervisors of the City and County of San Francisco.


Gloria L. Young
Clerk of the Board

02-03-06
Date Approved


Mayor Gavin Newsom

MEMORANDUM

October 3, 2013

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

FROM: Monique Moyer
Executive Director

SUBJECT: Request Approval of a Mutual Termination Agreement with Literacy for Environmental Justice, for Lease No. L-13816, for the EcoCenter at Heron's Head Park, located at Jennings Street and Cargo Way, subject to Board of Supervisors approval.

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION

EXECUTIVE SUMMARY

Port staff is seeking authorization from the Port Commission to execute a Mutual Termination Agreement with Literacy for Environmental Justice ("LEJ"), a California corporation. LEJ has requested to terminate its Lease No. L-13816 ("Lease") prior to its specified termination date of December 6, 2017, subject to Board of Supervisors approval.

BACKGROUND

Heron's Head Park is a 22-acre open space owned and operated by the Port of San Francisco (the "Port") dedicated to wetland and wildlife habitat and passive recreation (see Exhibit A – Site Location). The EcoCenter is an approximately 2,300 square foot building within Heron's Head Park. It is comprised of a single open meeting room, adjacent wastewater treatment room, two restrooms, and two very small office and utility rooms.

LEJ, a non-profit organization in the Bayview-Hunters Point neighborhood, has leased the footprint of land beneath the EcoCenter and surrounding 6,058 square-foot non-

THIS PRINT COVERS CALENDAR ITEM NO. 7A

exclusive outdoor license area (see Exhibit B and B-1 – Site Plan for Lease No. L-13816) since 2007. The Lease and a subsequent addendum revising certain construction requirements were approved by Port Commission Resolution Nos. 05-64 and 07-63 and Board of Supervisors Resolution Nos. 60-06 and 553-07.

The Port and LEJ also entered into other agreements related to the Lease, including License No. 14831 for installation of a potable water supply line ("License"), an Agreement Protecting the Public Interest in Certain Improvements and Development dated July 16, 2008 with the Port and California State Coastal Conservancy, and a Letter Agreement Regarding Mayor's Office of Housing Division of Community Development Funding for Improvements at The EcoCenter at Heron's Head Park dated February 16, 2010 with the Port and the Mayor's Office of Housing, Division of Community Development.

LEJ secured funds, permits, licenses and approvals required for construction, and completed construction in 2010. Since opening the EcoCenter, LEJ has experienced financial and staffing setbacks and is unable to operate, maintain and program the facility. LEJ approached the Port seeking to terminate its Lease and License for the EcoCenter. Both parties desire to terminate the Lease and License so that the Port may seek a new tenant to operate the EcoCenter and achieve the public benefit originally intended.

Port staff requested and received Port Commission authorization on September 24, 2013 to issue a Request for Proposals seeking qualified entities to lease the EcoCenter, contingent upon termination of the subject Lease and License. The proposal solicitation process is underway.

MUTUAL TERMINATION AGREEMENT

The Mutual Termination Agreement transfers ownership of the EcoCenter building and all site improvements to the Port. The Port retains the Security Deposit, Capital Improvement Fee, and Removal Fee, a total of \$68,000. LEJ agrees to cooperate with the Port and third party funders in any matter relating to the termination. The Mutual Termination Agreement will also specify that each party will release the other from obligations and liability related to the Lease, License or related agreements, except for LEJ's indemnification obligations and any other obligation that expressly survive termination.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing staff to execute a Mutual Termination Agreement between the Port of San Francisco and Literacy for Environmental Justice, subject to approval by the Board of Supervisors of the City and County of San Francisco under Charter section 9.118.

Prepared by: Carol Bach, Environmental & Regulatory Affairs Manager
Planning & Development Division

Jeff Bauer, Senior Leasing Manager
Real Estate Division

For: Byron Rhett, Deputy Director
Planning & Development Division

Susan Reynolds, Deputy Director
Real Estate Division

Exhibit A: Site Location, The EcoCenter at Heron's Head Park
Exhibit B: Site Plan for Lease L--13816

CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

LEASE NO. 13816

between the

CITY AND COUNTY OF SAN FRANCISCO,
THROUGH THE SAN FRANCISCO PORT COMMISSION

"Port"

and

LITERACY FOR ENVIRONMENTAL JUSTICE

A NON-PROFIT ORGANIZATION

"Tenant"

Dated as of September 27, 2005

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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Lease Exhibits:

Exhibit A	Legal Description of the Property
Exhibit B	Site Plan of the Property
Exhibit B-1	Non-Exclusive License Area
Exhibit C	Public Access Area – BCDC Permit
Exhibit D	Capital Improvements
Exhibit D-1	Procedures for Capital Improvements
Exhibit E	First Source Hiring Ordinance
Exhibit F	Mitigation Measures
Exhibit G	Work Letter
Exhibit H	Assignment and Assumption Agreement
Exhibit I	Port Release

LEASE

THIS LEASE ("Lease"), dated for reference purposes as of September 27, 2005, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**") and LITERACY FOR ENVIRONMENTAL JUSTICE, a California non-profit corporation ("**Tenant**").

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The Port constructed Heron's Head Park ("**HHP**") on the formerly undeveloped Pier 98 in 1998 as part of settlement of a BCDC enforcement order. The park includes approximately 8 acres of wetland habitat, and 14 acres of upland open-space with trails, picnic area, interpretive signs, and a fishing pier.

B. Tenant is a non-profit organization located in Bayview Hunter's Point. Tenant's mission is to provide environmental education to urban youth. Tenant has been running education and community/volunteer participation programs at HHP since its inception, and has been under contract to the Port since 1999.

C. In 2001, Tenant applied for and received a grant of \$898,000 from the City and County of San Francisco Department of the Environment ("**DOE**") to construct a "Living Classroom" at HHP. The classroom will consist of a one-story, 1,425 square foot building with passive solar power (the "**Living Classroom**"). It will be certified as a LEED ("**Leader in Energy and Environmental Design**") structure, in accordance with the City's Green Building Ordinance. The Living Classroom will house Tenant's educational programs and will be available for certain other educational and community functions discussed further in this Lease.

D. In January 2001, the Port Commission approved Resolution No. 01-02 supporting Tenant's grant application and authorizing Port staff to negotiate agreements with Tenant as needed to construct the Living Classroom. On September 27, 2005, the Port Commission approved Resolution No. 05-64, authorizing and directing the Port Executive Director to enter into this Lease with Tenant.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. PREMISES; TERM

1.1 Premises.

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the "**Premises**", consisting of the real property in the City and County of San Francisco, California,

as more particularly described in Exhibit A attached hereto and shown on Exhibit B, (the "**Property**"), together with all rights, privileges and licenses appurtenant to the Property and owned by Port, all other structures and substructures affixed thereto (the "**Buildings**"), and the Improvements to be hereafter constructed on the Property (subject to Section 9.2) except for the License Area Improvements described below, for the uses permitted under Section 3.1 of this Lease.

(b) Non-Exclusive License. Those Initial Improvements adjacent to and around the Living Classroom to be constructed by Tenant on the Property, including but not limited to a footpath, sitting areas and landscaping, shall be collectively referred to herein as the "**License Area Improvements**", and the portion of the Property on which the License Area Improvements shall be constructed, as shown on Exhibit B-1 attached hereto, shall be referred to herein as the "License Area". Port grants Tenant a non-exclusive license to the License Area for the purposes of constructing, maintaining and using the License Area Improvements. Notwithstanding anything to the contrary stated in this Lease, all of the terms and conditions set forth in this Lease with respect to the Premises shall also apply to the License Area, including without limitation, provisions regarding use, insurance requirements, indemnification and regulatory approvals.

(c) Non-Exclusive Nature of Lease. Tenant acknowledges that the Premises and the License Area are within a public park that is open to members of the general public for use and enjoyment. Tenant further acknowledges that the Port, from time to time, awards a contract for the conduct of environmental educational programs at HHP and that the recipient of such contract is a public interest organization selected through a competitive bidding process. Based on the foregoing and notwithstanding anything to the contrary stated in this Lease, Tenant agrees as follows: (i) while Tenant was awarded the most recent contract described above, it may not necessarily do so in future bidding processes and the Port's lease of the Premises and license of the License Area granted herein are not warranties, representations or commitments by or from Port to award any of such future contracts to Tenant; (ii) the general public may continue to use any portion of the HHP, including the License Area and the License Area Improvements, generally considered to be public park land and such use will not be deemed an infringement or violation of Tenant's quiet enjoyment rights hereunder; (iii) Tenant will allow any future contractee of the Port environmental educational funds described above to rent the Premises, including the building constructed thereon by Tenant, on such terms and conditions and in such manner negotiated by Port and Tenant in good faith prior to the issuance of any request for proposal for such contract ("**RFP**"), provided such use does not unreasonably interfere with Tenant's use of the Premises, and Port shall disclose the terms and conditions negotiated by Port and Tenant in any such RFP and (iv) the reasonable use by Port contractees of the Premises shall not be deemed an infringement or violation of Tenant's quiet enjoyment rights hereunder as long as such use is consistent with the terms and conditions negotiated by the Port and Tenant in subparagraph (iii) above.

(d) Subsurface Mineral Rights. Under the terms and conditions of Section 2 of the Burton Act, the State of California ("**State**") has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Property. In accordance with the provisions

of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Property, and specifically located in Zone 3, California Grid System, at a point where X equals 1,457,860 and Y equals 456,560 provided that such right shall not be exercised so as to disturb or otherwise interfere with the leasehold estate or the use and operation of the Premises in accordance with the terms hereunder, including the ability of the Property to support the Buildings and all other Improvements and appurtenances now or hereafter located on the Property. Without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises shall be governed under Section 12 hereunder. Port shall have no liability under this Lease arising out of any exercise by the State of such mineral rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability).

(e) "AS-IS WITH ALL FAULTS." TENANT AGREES THAT THE PREMISES HAS BEEN DELIVERED BY PORT AND ACCEPTED BY TENANT IN ITS "AS IS WITH ALL FAULTS" CONDITION. TENANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, INCLUDING THE PORT, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, NOR ANY AGENT OF ANY OF THEM, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR APPURTENANCES TO THE PREMISES FOR THE DEVELOPMENT, USE OR OPERATION OF THE PERMITTED USES, ANY COMPLIANCE WITH LAWS OR LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PREMISES OR THE PERMITTED USES.

(f) Release. As part of its agreement to accept the Premises in its "As Is With All Faults" condition set forth above, Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, the Port, the City and its agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, above or about the Premises (including, but not limited to, soils and groundwater conditions), and (ii) any Laws applicable to the Premises, including without limitation, Hazardous Materials Laws.

In connection with the foregoing release, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE

MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Tenant agrees that the release contemplated by this Section includes unknown claims for Losses pertaining to the subject matter of this release. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

Initials: _____

1.2 Term of Lease.

(a) Commencement Date. The effectiveness of this Lease shall commence on the date (the "**Commencement Date**") all of the following conditions are satisfied (or, if differing dates, the date of the final condition to be satisfied): (i) Issuance of a Material man's Completion Bond as described in Section 18.1(x) by a surety company licensed by the State of California and approved by the Port; (ii) Port's receipt of the Removal Fee as described in Section 15.2; (iii) Port's receipt from Tenant of the Capital Improvements Fee as described in Section 8.1(a) as well as all other fees and deposits required under this Lease; (iv) approval by San Francisco Port Commission; (v) approval by San Francisco Board of Supervisors; and (v) full execution and delivery of this Lease. Promptly following the Commencement Date, the Parties shall execute and deliver a memorandum confirming the Commencement Date; provided, however, that failure to do so shall not delay or modify the Commencement Date or affect the respective rights or obligations of the Parties under this Lease.

(b) Term. The Term shall be for ten (10) years, commencing on the Operational Date or Occupancy Date, as the case may be (both terms as defined below) and terminating on the tenth (10th) anniversary of the Operational Date or Occupancy Date, as the case may be ("**Termination Date**"), unless earlier terminated in accordance with the provisions of this Lease.

(c) Operational Date. Upon the Commencement Date, Port shall deliver possession of the Premises to Tenant and Tenant shall have the right to commence construction of the Initial Improvements in accordance with the terms of this Lease. Notwithstanding anything to the contrary stated in this Lease, Tenant shall not have the right to commence operations at the Premises or occupy the Premises for any reason other than for the sole purposes of completing the Initial Improvements until the date on which the Completion (as defined below) of the Jefferson-Martin 230kV Line Project occurs. Such Completion date shall be documented in writing by the Port and Tenant, and such date shall be considered the "**Operational Date**" for purposes of this Lease notwithstanding the Completion date or the actual date of Tenant's commencement of operations at or occupancy of the Premises. In the event the Operational Date as defined herein does not occur by July 1, 2006, Port in consultation with the Conservancy and Tenant, shall propose within ninety (90) calendar days thereof a reasonable alternative trigger event for Tenant's commencement of operations at the Premises.

Tenant shall have the right to reject Port's proposed alternative trigger event for any reason whatsoever, in which event the triggering conditions stated in this subparagraph (c) shall remain in full force and effect. If Tenant agrees to Port's proposed alternative, the Port and Tenant shall document such alternative trigger event and the terms and conditions related thereto in an amendment to this Lease. The Port Executive Director shall have the authority to execute said amendment without Port Commission or Board of Supervisors approval, as long as the provisions of the amendment address solely the issue of the trigger event described herein and any related provisions of this Lease affected by such new trigger event. Under no circumstances shall the Port Executive Director have the right to extend the term of this Lease without seeking authority to do so from the Port Commission and/or Board of Supervisors, as may be generally required under local laws and regulations. For purposes of this subparagraph only, "**Completion**" shall mean the delivery of notice by Pacific Gas & Electric Company ("PGE") to the California Independent System Operator that PGE intends to energize the Jefferson-Martin 230kV Line Project or such other commensurate action taken by PGE to indicate completion thereof. In the event the Operational Date has not occurred on or before June 1, 2007, then notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right to occupy the Premises and commence operations therein any date on or after June 1, 2007, regardless of whether Completion or an alternative trigger event has occurred by such date, provided the Initial Improvements have been fully constructed in accordance with the terms and conditions of this Lease. Port and Tenant shall document in writing such actual date of commencement of operations at the Premises, in which event such date shall be deemed the "**Occupancy Date**" for purposes of this Lease.

1.3 Definitions. All initially capitalized terms used herein are either defined in Section 42, or have the meanings given them when first defined, or are defined in the Work Letter.

SECTION 2. RENT

2.1 Tenant's Covenant to Pay Rent. During the Term of this Lease, Tenant shall pay Rent for the Premises to Port at the times and in the manner provided in this Section 2.

2.2 Base Rent. Commencing on the Operational Date or the Occupancy Date, as the case may be, and continuing through the remainder of the Term, Tenant shall pay to Port annual Base Rent of Five Thousand Five Hundred Dollars and Eighty Cents (\$5,500.80). Such Base Rent shall be paid at the rate of Four Hundred Fifty Eight Dollars Forty Cents (\$458.40) per month. All Base Rent due hereunder shall be paid in advance on the first day of each calendar month.

(a) Adjustment to Base Rent.

(i) Commencing on the first Anniversary Date of the Operational Date or the Occupancy Date, as the case may be, and on each Anniversary Date thereafter (the "**Rent Adjustment Date**"), the Base Rent shall be adjusted for the succeeding year in direct proportion to the percentage increase in the Current Index over the Base Index. In no case shall the Base

Rent, as adjusted, be less than the Base Rent in effect immediately prior to the Anniversary Date. If the Current Index has increased over the Base Index, the adjusted Base Rent shall be determined by multiplying the Base Rent by a fraction, the numerator of which is the Current Index and the denominator of which is the Base Index, as follows:

$$\frac{\text{Current Index}}{\text{Base Index}} \times \text{Base Rent} = \text{Adjusted Base Rent}$$

(ii) For purposes of calculating the aforesaid increase on each Rent Adjustment Date: (1) "**Current Index**" means the Index for the calendar month immediately preceding each Rent Adjustment Date, and (2) "**Base Index**" means as follows: (A) for the adjustment on the first Rent Adjustment Date, the Index for the calendar month immediately preceding the month during which the first Rent Adjustment Date occurs; and (B) for each Rent Adjustment Date thereafter, the Index for the calendar month immediately preceding the month in which the last Rent Adjustment Date prior to the then applicable Rent Adjustment Date occurs.

2.3 Manner of Payment of Rent. Tenant shall pay all Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other person or at such other place as Port may from time to time designate by notice to Tenant. Base Rent and shall be payable at the times specified in Sections 2.2, respectively, without prior notice or demand. Additional Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Additional Rent shall be due thirty (30) days following the giving by Port of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

2.4 Limitations on Abatement or Setoff. Tenant shall pay all Rent, including any and all Additional Rent, at the times and in the manner in this Lease provided without any abatement, setoff, deduction, or counterclaim, except as otherwise provided in Sections 2.9 of this Lease.

2.5 Late Charges. Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, a charge equivalent to zero point eight three three percent (0.833%) of all Rent, charges and fees, or any portion thereof, due and unpaid for more than five (5) days, will be paid by Tenant for each month that such Rent, charges and fees, or any portion thereof, remain due and unpaid, plus any reasonable attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other charges, or both, when due under this Lease. Such charges shall be computed from the date on which such Rent, charges and fees first became due. The parties agree that such late charges represent a fair and reasonable estimate of the cost which Port will incur by reason of any late payment by Tenant.

2.6 Fines Without limiting Port's other rights and remedies set forth in this Lease, if Tenant violates any of the terms specified below, the Port may elect to impose the fines described below on the basis of per violation per day:

<u>Violation</u>	<u>Fine</u>
Violation of Premises Clause	\$300.
Violation of Use and Operations	\$300.
Failure to cause operations or premises to comply with laws	\$300.
Failure to submit reports as and when required	\$100.
Construction without Port approval	\$300.
Failure to maintain or repair	\$300.
Failure to obtain or maintain insurance	\$100.
Failure to obtain or maintain security deposits	\$100.

Port's right to impose the foregoing fines shall be in addition to and not in lieu of any and all other rights under this Lease or at law or in equity; provided, however, that Port agrees that once an "Event of Default" has occurred, it will no longer impose any new fines with respect to such default. Port shall have no obligation to Tenant to impose fines on or otherwise take action against any other person. Such fines shall constitute Additional Rent.

2.7 Additional Rent. Except as otherwise provided in this Lease, all costs, fees, fines, interest, charges, expenses, reimbursements and Tenant's monetary obligations of every kind and nature relating to the Premises that may arise or become due during the Term of, or in connection with, this Lease, whether foreseen or unforeseen, which are payable by Tenant to Port pursuant to this Lease, shall be deemed Additional Rent. Port shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Base Rent.

2.8 Net Lease. It is the purpose of this Lease and intent of Port and Tenant that, except as otherwise provided in Section 2.9 below, all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall Port be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, but except as expressly provided to the contrary in this Lease, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises and any Improvements, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part, except as otherwise expressly provided in this Lease. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence

or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

2.9 Rent Credit for Site Preparation Work. Port acknowledges that the Property needs considerable site preparation to accommodate Tenant's proposed improvements. Tenant, at Tenant's sole cost and expense, shall grade and prepare the site, and construct a foundation for the building to be located on the Property-pending clarification from LEJ (the "**Site Preparation Work**"). The Site Preparation Work shall be completed in conformance with **Section 9** and the Work Letter and shall be deemed included in the meaning of Initial Improvements as such term is defined in this Lease.

In consideration of Tenant's performance of the Site Preparation Work and its expenditures related thereto, Port shall issue a rent credit to Tenant in an amount equal to Tenant's Verified Construction Costs (as defined below), or Seventy Thousand Dollars (\$70,000) whichever is the lesser amount (the "**Rent Credit**"), but in no event more than the aggregate Base Rent due by Tenant during the Term of this Lease.

"Verified Construction Costs" are defined to consist of Construction Costs (as defined herein) for the Site Preparation Work that have been verified by Port to be eligible for the Rent Credit. **"Construction Costs"** are defined to include actual costs incurred for labor, materials, contractor fees, and reasonable architecture and engineering fees in connection with the Site Preparation Work. In order for Construction Costs to be verified by Port: (1) Tenant must first obtain, prior to commencing the work, written approval from Port that the proposed work would qualify as work for which Tenant would be entitled to receive a Rent Credit under the terms of the Lease, and that the proposed work and the anticipated budget categories and amounts for the Construction Costs of the proposed work are reasonable; and (2) Tenant must obtain all required governmental approvals, including, but not limited to building permits. After the completion of the approved work, Tenant shall require its project manager of the Site Preparation Work to prepare and deliver to Port an itemized statement of the actual Construction Costs expended by Tenant on the approved Site Preparation Work, accompanied by documentation substantiating all said expenditures. Such documentation of expenditures shall include: (a) copies of executed contracts; (b) copies of invoices for labor, services and/or materials, copies of bills of lading, and/or copies of other bills or receipts for goods, materials and/or services; (c) copies of canceled checks, and (d) such other proofs of expenditure as may be reasonably requested by Port. Such appropriate proofs of expenditure may include copies of canceled checks; copies of contracts or invoices for labor, services and/or materials marked "Paid", or otherwise evidenced as having been paid bills of lading marked "Paid"; other bills, contracts, receipts for goods materials and/or services marked "Paid" and such other proofs of expenditure as may be reasonably approved by Port. All such proofs of expenditure must be directly attributable to repairs and maintenance that are otherwise the obligation of Port and may include materials purchased by Tenant for installation by Port but not the cost to the Port for such installation. Upon receipt of and based upon said statement and accompanying documentation which substantiate the actual Construction Costs expended, Port in its reasonable discretion shall determine the Verified Construction Costs.

All rent credits available to Tenant including those permitted by this Section 2.9 shall be applied against Base Rent payment obligation during the Term at a rate not greater than one hundred percent (100%) of the applicable month Base Rent payment and shall be applied if and only if Tenant is in good standing and is not in default of any of the Terms of this Lease. In the event that the total Rent Credit available to Tenant pursuant to this Section 2.9 and any other sections of this Lease exceeds an amount equal to one hundred percent (100%) of the Base Rent payment for any one calendar month, the remaining available Rent Credit shall be carried forward to successive calendar months at a rate not to exceed one hundred percent (100%) of the applicable Base Rent payment, until all available rent credits have been fully applied. In no event, however, shall Tenant be entitled to the application of any rent credits or the value thereof, beyond the expiration or earlier termination of this Lease.

SECTION 3. USES

3.1 Permitted Uses. Tenant shall use and operate the Premises substantially in accordance with the project parameters set forth in the Scope of Development attached to the Work Letter as Attachment 2 and as further required or permitted in this Section 3. In furtherance thereof, Tenant may use the Premises for the following uses (collectively, the "**Permitted Uses**"), and Tenant shall not allow any changes or additions to the Permitted Uses or changes in its use or operation of the Premises that would be substantially inconsistent with the Scope of Development or applicable Regulatory Approvals, without the prior consent of the Port Commission by resolution.

(a) The construction and operation of the Living Classroom, anticipated to be a building consisting of approximately 1,450 square feet of indoor space including a small office, a main meeting room, two bathrooms, a storage room, and a small greenhouse. The facility will be used for environmental education programs and other purposes consistent with the BCDC Permit and for no other purpose.

(b) Public access, open space and landscaping uses consistent with the Scope of Development and Regulatory Approvals;

(c) Administrative offices specifically related to Tenant's use and occupancy of the Premises as permitted hereunder, up to a maximum of ten percent (10%) of the total building floor area of the Premises;

(d) Storage of maintenance equipment and supplies used in connection with the operation of the Premises for the Permitted Uses; and

(e) Other uses reasonably related or incidental to any of the foregoing.

3.2 Advertising and Signs. Subject to the prohibition on tobacco advertising provided in Section 40.5, Tenant shall have the right to install signs and advertising on the exterior of the building or elsewhere on the Premises in accordance with the signage plans included in the Preliminary Construction Documents and approved by Port pursuant to the terms of the Work Letter. Any proposed signs or advertisements that are visible from the exterior of the building,

including without limitation, on any awnings, canopies or banners shall be subject to Port's approval, in conformity with the sign guidelines that have been adopted by the Port and are implemented on its property (the "**Sign Guidelines**"), a copy of which has been provided separately to Tenant. Port retains the right to amend or otherwise modify its Sign Guidelines. All signs shall comply with applicable Laws regulating signs and advertising.

3.3 Limitations on Uses by Tenant. Tenant shall not conduct or permit on the Premises any of the following activities (the "**Prohibited Activities**") by any Persons (provided that Tenant shall not be responsible nor incur any liability for any such activities by the City or Port):

(i) any activity that is not within the Permitted Uses or otherwise approved by the Port in writing;

(ii) any activity that will in any way cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

(iii) any activity or object that will cause damage to the structural integrity of any of the buildings on the Premises;

(iv) any activity that constitutes waste or a public or private nuisance to owners or occupants of adjacent properties, but only if same are determined to have occurred by a court of competent jurisdiction subject to any right of Tenant to alter, modify, repair, maintain, restore or construct improvements;

(v) any activity that materially injures, obstructs or interferes with the rights of other tenants, owners or occupants of adjacent properties, including, without limitation, rights of ingress and egress to their properties except to the extent such use is a Permitted Use and is being conducted in compliance with all Laws and Regulatory Approvals;

(vi) use of the Premises for sleeping or personal living quarters;

(vii) any auction, distress, fire, bankruptcy or going-out-of-business sale on the Premises without the prior written consent of Port; or

(viii) any private use of the Premises designated as a Public Access Area unless specifically permitted pursuant to Section 3.4 hereof.

Furthermore, Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Port's reversionary interest in the Premises or obtain changes in applicable land use Laws or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Port's prior written consent, which consent may be withheld in Port's sole and absolute discretion, and subject to the provisions of Section 6.2. The foregoing notwithstanding, the Parties recognize that for Tenant to carry out any changes to its intended use of the Premises, it may be necessary or desirable to obtain additional use, zoning, regulatory or land use approvals or conditional use

authorizations relating to the Premises. Port agrees, from time to time, to reasonably cooperate with Tenant, at no out of pocket expense to Port, in pursuing such aforementioned Regulatory Approvals or authorizations, subject to the limitations of Section 6.2 hereof.

3.4 Public Access Areas. As of the Commencement Date, BCDC, the Port, and/or other applicable Regulatory Agencies have imposed conditions upon Tenant or the Port requiring that certain portions of the Premises be designated and/or improved as Public Access Areas to provide reasonable access rights so as to permit use of such areas by the general public consistent with the Public Trust, and BCDC requirements, as depicted and described in the attached Exhibit C. Tenant agrees not to undertake any activities, construct any Improvements, or erect or maintain any objects within the Public Access Areas on the Premises that would materially interfere with views of San Francisco Bay and other such intended public use. Notwithstanding the foregoing, from time to time upon receipt of prior written approval of the Port, and subject to Tenant's receipt of all other necessary governmental approval(s) (including, without limitation, the Port in its regulatory capacity), Tenant may temporarily restrict or block-off all or any portion of the Public Access Areas on the Premises for use by Tenant for special events conducted at the Premises.

SECTION 4. TAXES AND ASSESSMENTS

4.1 Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes. Subject to Tenant's rights under Section 5.1, Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes legally assessed, levied or imposed by applicable Laws on the Premises or any of the Improvements or Personal Property located on the Premises or arising out of Tenant's leasehold estate created by this Lease, to the full extent of installments or amounts payable or arising during the Term. Subject to the provisions of Section 5 hereof, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the City's Assessor; provided, however, that Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 5.

(i) Changes in Ownership of Leasehold Estate. Tenant acknowledges that any Sublease or assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefor may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(ii) Reporting Requirements. San Francisco Administrative Code Sections 6.63-1, 6.63-2, 23.38 and 23.39 require that Port report certain information relating to

this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant shall provide such information as may reasonably be requested by Port to enable Port to comply with such requirements.

(b) Other Impositions. Except as otherwise specifically provided in this Lease, without limiting the provisions of Section 4.1(a), but subject to Section 5.1, Tenant shall pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)), which may be legally assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any of the Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon, the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, or any Subtenant or any other Person may have acquired pursuant to this Lease. Subject to the provisions of Section 5, Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any such Imposition. As used herein, "Impositions" means all taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the Improvements or Personal Property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character. The foregoing or subsequent provisions notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, the Port's fee ownership interest in the Premises, the Port's interest as landlord under this Lease, or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Port's fee interest or a transfer thereof.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and Port on a daily basis.

(d) Proof of Compliance. Within a reasonable time (but in any event, not more than fifteen (15) days) following Port's written request which Port may give at any time and give from time to time, Tenant shall deliver to Port copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

4.2 Port's Right to Pay. Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 5, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency and fails to pay

same thereafter for more than five (5) days after written demand from Port that Tenant pay same, unless Tenant has given written notice to Port that Tenant is contesting such Imposition, Port, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, and the amount so paid by Port (including any interest and penalties thereon paid by Port), together with interest at the Default Rate computed from the date Port makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Port within thirty (30) days following demand.

SECTION 5. CONTESTS

5.1 Right of Tenant to Contest Impositions and Liens. Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance, against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, and with reasonable cooperation of the Port but at no cost to Port. Tenant shall give notice to Port within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Port is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Port or any owner of the Premises, Port, at the request of Tenant and at no cost to Port, with counsel selected and engaged by Tenant, subject to Port's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Port or any owner of the Premises. Except as provided in the preceding sentence, Port shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Section 17, Tenant shall Indemnify Port for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which Port may be legally obligated to pay.

5.2 Port's Right to Contest Impositions. At its own cost and after notice to Tenant of its intention to do so, Port may but in no event shall be obligated to contest the validity,

applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Port to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment, and so long as such activities do not cause a default under any Mortgage in effect at the time. Port shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Port shall reimburse Tenant within thirty (30) days after demand from Tenant for any such fines, penalties, costs, interest, expenses or fees, including Attorneys' Fees and Costs, which Tenant may be legally obligated to pay as a result of Port's contest of such Impositions.

SECTION 6. COMPLIANCE WITH LAWS

6.1 Compliance with Laws and Other Requirements.

(a) Tenant's Obligation to Comply During the Term. Subject to Tenant's rights under Section 5.1, Tenant shall comply with, at no cost to Port (i) all applicable Laws (including, without limitation, the Regulatory Approvals), (ii) all Mitigation Measures imposed on Tenant in connection with the Improvements, (iii) the requirements of all policies of insurance required to be maintained pursuant to Section 18 of this Lease, and (iv) the Work Letter (so long as the Work Letter remains in effect). The foregoing sentence shall not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses under Section 3.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits, nor do such uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Permitted Uses, at such time and only to the extent such additions, modifications and installations are required by such Law, subject to the provisions of Section 6.1(b) and subject to any "grandfathering," hardship exceptions or variances to which Tenant or the Premises may be entitled.

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 6.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease; provided, however, Tenant's obligation to comply with future Laws shall be subject to Tenant's rights to contest same pursuant to Section 5.1 or as otherwise may be available to Tenant under Law. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements and the Substructure), to the extent required by applicable Law, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which

curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against the Port pursuant to this Lease or applicable Law. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation, except to the extent provided in Sections 1.1(c), 2.9, and 23.3.

(c) Proof of Compliance. Tenant shall promptly upon request provide Port with evidence of its compliance with any of the obligations required under this Section.

6.2 Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity, as the holder of fee title to the Premises for the public benefit on the terms of the Public Trust, and not in its capacity as a regulatory agency of the City. Tenant understands that the entry by the Port into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including the Port itself in its regulatory capacity. By entering into this Lease, the Port is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that the Initial Improvements and Tenant's contemplated uses and activities on the Premises and any subsequent changes in Permitted Uses (if allowed under the terms of this Lease), and any alterations or Subsequent Construction to the Premises, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where Port will be required to act as a co-permittee, or where Tenant proposes Subsequent Construction which requires Port's approval under Section 10, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the Port) without first obtaining the approval of Port, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with Port in Tenant's efforts to obtain such Regulatory Approval, and Port shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any regulatory agency other than Port, if the Port is required to be a co-permittee under such permit, or if the applicable agency (or the City Attorneys Office of the City on behalf of the Port) confirms that the

conditions or restrictions it would impose on the project would create obligations on the part of the Port (whether on or off of the Premises) which would obligate the Port itself, and not just Tenant or other Subtenant or private operator of the Premises (and/or a successor or assignee thereof); on or off the Premises, to perform or observe, unless in each instance the Port has approved such conditions in writing and in the Port's sole and absolute discretion. The Port shall provide Tenant with its approval or disapproval thereof in writing within ten (10) business days after Tenant's written request, or if the Port's Executive Director (upon consulting with the City Attorney) determines that Port Commission or Board of Supervisors action is necessary, at the first Port and subsequent Board hearings after receipt of Tenant's written request subject to notice requirements, Commission and Board calendaring, and reasonable staff preparation time. Port's failure to so notify the Tenant of Port's approval or disapproval of the applicable condition or permit within the applicable period referenced above shall constitute Port's approval of the applicable condition or permit; provided, however, no such deemed approval shall apply to any action required to be taken by the Board of Supervisors. No such approval by the Port shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, the Port shall join, where required, in any application by Tenant for a BCDC permit or other required Regulatory Approval, and in executing such permit; provided that the Port shall have no obligation to join in any such application or execute the permit if the Port does not approve, in its sole and absolute discretion, the conditions imposed by BCDC or other regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to Port or the City, with any and all conditions or exactions imposed by any regulatory agency as part of a Regulatory Approval; provided, however, Tenant shall give Port reasonable notice of such appeal or contest and keep the Port informed of such proceedings. Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and Port shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Section 17, and provided that Port approves (or is deemed to have approved) all permits, conditions and restrictions of the Regulatory Approvals that are required to be approved by Port, Tenant shall Indemnify the Port and the City and any Indemnified Party from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which Port may be liable in connection with Tenant's failure to comply with any Regulatory Approval or in connection with the litigation against or appeal or contest of, any Regulatory Approval or any conditions thereof, except to the extent that such costs or liability arises from the negligent or willful acts or omissions of Port acting in its proprietary capacity.

SECTION 7. TENANT'S MANAGEMENT COVENANTS

7.1 Covenants. Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Improvements in addition to all other aspects of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises are put,

including, but not limited to, (a) repair and maintenance of the Improvements (including the License Area Improvements and any Public Access Improvements on the Premises), as more fully described in Section 8, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and grounds keeping and (e) security services for the Premises.

7.2 Continuous Operations. Tenant shall use commercially reasonable efforts to ensure that the Premises are used continuously during the Term with the uses permitted pursuant to Section 3.1 of this Lease, and shall not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of Port, which consent may be withheld in Port's sole and absolute discretion. Notwithstanding the foregoing, the Port shall not withhold its consent to any cessation of operations for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises become untenable due to Force Majeure, or (b) as may be necessary in connection with performing repairs or Subsequent Construction in or to the Premises. At all times during the Lease, Tenant shall continuously keep the Public Access Areas, per Section 3.4, open for use by the public, unless waived by the Port in its reasonable discretion.

SECTION 8. REPAIR AND MAINTENANCE

8.1 Covenants to Repair and Maintain the Premises.

(a) Tenant's Duty to Maintain; Capital Improvements. Tenant acknowledges and agrees that it is the intent of the parties to enter into a triple net Lease and to allocate to Tenant financial responsibility for all maintenance and repair of the Premises and License Area Improvements, whether structural or non-structural, foreseen or unforeseen at the time of Lease execution. Notwithstanding the foregoing, Port acknowledges that Tenant may not have the ability to perform certain capital improvements on the Premises at a future date should they arise. Accordingly, Port and Tenant hereby agree that Tenant shall be responsible, at its sole cost and expense, for the maintenance and repair of the entire Premises, throughout the Term of this Lease, except for the capital improvement items expressly provided in Exhibit D attached hereto (the "**Capital Improvements**"). Port agrees to undertake maintenance and repair responsibility, at Tenant's sole costs and expense, for the Capital Improvements during the Term; provided that, on or prior to the Commencement Date, Tenant pays Port in cash the amount of Forty Eight Thousand Dollars (\$48,000) (the "**Capital Improvements Fee**"), which amount, the parties jointly agree, represents a fair estimate of the costs of performing the Capital Improvements as of the Commencement Date. The Capital Improvements Fee shall be used to pay for any Capital Improvements undertaken by Port during the term of this Lease or any extension or renewal of Tenant's occupancy of the Premises. Port and Tenant shall each follow the procedures set forth in the attached Exhibit D-1 with respect to notice, construction, accounting and all other items set forth in such Exhibit D-1. Failure to follow such procedures by either party shall be deemed a breach of contract. At any time and as many times during the Lease Term that the remaining Capital Improvements Fee is less than twenty four thousand dollars (\$24,000), and provided Port reasonably determines such amount is insufficient for anticipated Capital Improvements over the remainder of the Lease Term, then Port may request a reasonable increase in the Capital

Improvements Fee, and Tenant shall be obligated to increase the Capital Improvements Fee, in an amount reasonably requested by Port, which amount shall be based upon Port's reasonable determination of the anticipated costs of Capital Improvements existing for the remainder of the Lease Term; provided, however, that notwithstanding anything to the contrary contained herein, the Port may not make a request for such additional funds at any time after the eighth (8th) anniversary date of the Operational Date or the Occupancy Date, as the case may be, and the Capital Improvements Fee in any one request cannot be increased to an amount in excess of the initial Capital Improvements Fee (\$48,000.00). In the event the actual costs of the Capital Improvements completed by the Port during the Lease Term exceed the Capital Improvements Fee, Tenant shall pay such excess. Tenant agrees that the Capital Improvements Fee is a charge, not a deposit, and Tenant shall not have the right to refund or reimbursement of any unused amounts of the Capital Improvements Fee at the expiration or early termination of this Lease, except that Tenant shall be entitled to a credit for any such remaining amount in the event Port and Tenant enter into a new lease for the Premises, or extension or amendment of this Lease, upon the termination of this Lease. Interest shall not accrue on the Capital Improvements Fee.

(b) First Class Condition; Waiver of Rights. As for Tenant's obligations hereunder, Tenant shall maintain and repair the Premises in first-class condition and in compliance with all applicable Laws and the requirements of this Lease. Subject to Sections 6.1(b), 12 and 13 of this Lease, Tenant shall promptly make (or cause others to make) all necessary or appropriate repairs whether, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, except for Capital Improvements. Tenant shall make all required repairs with materials, apparatus and facilities as originally installed by Tenant and approved by Port under this Lease as part of the Initial Improvements, or, if not originally subject to Port approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained. All repairs made by Tenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Improvements. Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at Port's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Port's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

(c) Notice. Tenant and Port shall deliver to the other, promptly after receipt, a copy of any notice which Tenant or Port may receive from time to time: (i) from any governmental authority having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Premise is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Section 18, asserting that the requirements of such insurance policy or policies are not being met.

SECTION 9. IMPROVEMENTS

9.1 Tenant's Obligation to Construct the Initial Improvements. Tenant shall construct the Initial Improvements in accordance with, and subject to all the terms, covenants, conditions and restrictions in the Work Letter. Port's issuance and recordation of a Certificate of Completion pursuant to the Work Letter shall conclusively establish Tenant's satisfactory completion of such construction, except for any Deferred Items (as defined in the Work Letter). Any Subsequent Construction shall be performed in accordance with Section 10.

9.2 Title to Improvements. During the Term of this Lease, Tenant shall own all of the Improvements, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein. At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding personal property and trade fixtures of Tenant or any subtenant(s)), will vest in Port without further action of any Party, and without compensation or payment to Tenant, except as otherwise provided in Sections 12.4 and 13 below. At the expiration or earlier termination of this Lease, Tenant shall not be obligated to remove any portion of the Improvements or any Subsequent Construction or any appurtenant fixtures, machinery or equipment installed in the Premises, unless directed to do so by Port in writing at least six (6) months prior to the Expiration Date.

SECTION 10. SUBSEQUENT CONSTRUCTION

10.1 Port's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Subsequent Construction in accordance with the provisions of this Section 10 provided that Tenant shall not, without Port's prior written approval (as provided in Section 10.1(c) below):

(i) Construct additional buildings or other additional structures, other than to replace or Restore those previously existing;

(ii) Increase the bulk or height of any Improvements beyond the bulk or height approved for the Initial Improvements;

(iii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(iv) Perform Subsequent Construction to the Public Access Areas that would materially adversely affect (other than temporarily during the period of such Subsequent Construction) the public access to, or the use or appearance of, such Public Access Areas;

(v) Materially increase or decrease either the Gross Building Area or the rentable area within the Premises (but not the square footage of the Premises) by more than ten percent (10%);

(vi) Perform Subsequent Construction involving the installation, repair or replacement of any interior illuminated signage that is visible from the exterior of the Premises;

(vii) Except as otherwise allowed under Section 10.2, perform Subsequent Construction involving replacement or reconstruction that involves design, colors, or materials which are materially different from those originally approved by Port in accordance with the Construction Documents and which are within the scope of approval by the Port under the Work Letter, unless materials originally installed are not reasonably available or do not meet current code requirements, and Tenant uses materials of equal quality, durability and appearance to the materials originally installed, as determined by Port; or

(viii) Perform Subsequent Construction that changes the location or square footage allocation of any of the Permitted Uses from that existing on the Premises as of the Commencement Date or subsequently approved by the Port in connection with the Improvements.

(b) Notice by Tenant. At least thirty (30) days before commencing any Subsequent Construction which requires Port's approval, Tenant shall notify Port of such planned Subsequent Construction. Such notice shall be accompanied by Final Construction Documents for such Subsequent Construction to the extent that such Subsequent Construction requires Port's approval. Within sixty (60) days after receipt of such notice from Tenant, Port shall have the right to object to any such Subsequent Construction. Port's failure to notify Tenant of its objection within fifteen (15) days after a second written request from Tenant received by Port after the expiration of the foregoing time period shall be deemed Port's approval of such Subsequent Construction, in its proprietary capacity but not in its regulatory capacity for any building permits or other regulatory approvals required to be issued by Port.

(c) Permits and Port's Approval. Tenant acknowledges that any actions which Tenant may wish to undertake under this Section 10 are subject to Sections 6.1(a) and 10.6(a)(ii) pursuant to which Tenant must comply with all Laws and obtain all Regulatory Approvals, whether from the Port and/or other applicable governmental agencies, if so required in connection with any Subsequent Construction. However, and not in limitation of any governmental regulatory authority of the Port with respect to any Subsequent Construction, the Port agrees that its approval of any Subsequent Construction under this Section 10 shall not be unreasonably withheld provided such Subsequent Construction is substantially in conformance with the applicable Regulatory Approvals therefor, including any issued by the Port and in conformance with this Lease.

10.2 Minor Alterations. Unless otherwise required under Section 10.1(a)(i)-(vii), Port's approval hereunder shall not be required for any other Subsequent Construction, involving, (a) the installation, repair or replacement of interior furnishings, fixtures, equipment, decorative improvements, wall coverings and window treatments or other alterations to the Premises which do not materially affect the structural integrity of the Improvements, (b) recarpeting, repainting the interior of the Premises, grounds keeping, or similar alterations, or

(c) any other Subsequent Construction which does not require a building permit or BCDC permit (collectively, "Minor Alterations").

10.3 Construction Documents in Connection with Subsequent Construction.

(a) Preparation, Review and Approval of Construction Documents. With regard to any Subsequent Construction that requires Port's approval under this Section 10, Tenant shall prepare and submit to Port (to the extent necessary in light of the Subsequent Construction to be performed), for review and written approval hereunder, reasonably detailed Schematic Drawings, and following Port's approval of such Schematic Drawings, Preliminary and Final Construction Documents (to the extent necessary in light of the Subsequent Construction to be performed) which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings and Preliminary and Final Construction Documents are referred to as "Construction Documents"). Port may waive the submittal requirement of Schematic Drawings if it determines in its sole and absolute discretion that the scope of the Subsequent Construction does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. Port, in its reasonable discretion, shall approve or disapprove Construction Documents submitted to it for approval within sixty (60) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Port deems the Construction Documents incomplete, Port shall notify Tenant of such fact within thirty (30) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If Port notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If Port disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of Section 10.4, Port shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in Port's previous notice of rejection, and Port shall approve or disapprove the revisions to the Construction Documents within sixty (60) days after resubmission. If Port fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 10.3, such failure shall not constitute a default under this Lease on the part of Port. However, Port's failure to approve or disapprove the Construction Documents and notify Tenant of its decision within fifteen (15) days after a second written request from Tenant received by Port after the expiration of the foregoing time period(s) shall be deemed Port's approval of same.

(b) Progress Meetings, Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Port and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Port and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration.

10.4 Port Disapproval of Construction Documents. Upon receipt by Tenant of a disapproval of Construction Documents from Port, Tenant (if it still desires to proceed) shall

revise such disapproved portions of such Construction Documents in a manner that addresses Port's written objections. Tenant shall resubmit such revised portions to Port as soon as possible after receipt of the notice of disapproval. Port shall approve or disapprove such revised portions in the same manner as provided in Section 10.3 for approval of Construction Documents (and any proposed changes therein) initially submitted to Port. If Tenant desires to make any substantial change in the Final Construction Documents after Port has approved them, then Tenant shall submit the proposed change to Port for its reasonable approval. Port shall notify Tenant in writing of its approval or disapproval within thirty (30) days after submission to Port. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such thirty (30) -day periods. Port's failure to so notify Tenant of Port's decision within fifteen (15) days after a second written request from Tenant received by Port after the expiration of the foregoing time periods shall be deemed Port's approval of such Construction Documents.

10.5 Construction Schedule.

(a) Performance. Tenant shall complete all Subsequent Construction with reasonable diligence, subject to Force Majeure.

(b) Reports and Information. During periods of construction, Tenant shall submit to Port written progress reports when and in such detail as reasonably requested by Port, along with appropriate backup documentation.

10.6 Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by Port:

(i) Port shall have approved the Final Construction Documents;

(ii) Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Section 6;

(iii) Tenant shall have submitted to Port in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction. If such good faith estimate exceeds Ten Thousand Dollars (\$10,000) Tenant shall also submit evidence reasonably satisfactory to Port, of Tenant's ability to pay such costs as and when due.

(b) Construction Standards. All Subsequent Construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. In addition, in the case of Subsequent Construction which begins after the Improvements have opened for business to the general public, Tenant shall erect appropriate

construction barricades substantially enclosing the area of such construction and maintain them until the Subsequent Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(c) Costs of Construction. Port shall have no responsibility for costs of any Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, Port and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, upon twenty-four (24) hour prior written notice during customary construction hours, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Port to conduct such inspections or any liability in connection therewith.

(e) Prevailing Wages. Tenant agrees that any person performing labor in the construction of the Initial Improvements or Subsequent Construction on the Premises shall be paid not less than the highest prevailing rate of wages and that Tenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant further agrees that, as to the construction of such improvements under this Lease, Tenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages. Tenant shall require any contractor to provide, and shall deliver to Port or City, as directed by Port, every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements.

10.7 Safety Matters. Tenant, while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work.

10.8 As-Built Plans and Specifications. With respect to any Subsequent Construction affecting the structural elements of the Improvements and for which Port's approval was required under Section 10, Tenant shall furnish to Port one set of as-built plans and specifications with respect to such Subsequent Construction (reproducible transparencies and CAD files) within thirty (30) days following completion. If Tenant fails to provide such as-built plans and specifications to Port within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section

shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity.

SECTION 11. UTILITY SERVICES

11.1 Port Providing No Services. Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises. Tenant shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the Premises are put. Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant acknowledges that as of the Commencement Date, City (including its Public Utilities Commission) is the sole and exclusive provider to the Premises of certain public utility services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent; provided, however, that nothing in this Lease shall constitute a waiver of Tenant's rights to seek and obtain recourse and damages against the provider of any utility service for any failure thereof, including, without limitation, the City. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services.

11.2 Antennae and Telecommunications Dishes. No antennae or telecommunications dish or other similar facilities on the exterior of the Premises may be installed on the Premises without the prior written approval of Port, which may be given or withheld in its sole and absolute discretion. Any wireless Telecommunications Systems installed on the exterior of the Premises shall be subject to Port's approval pursuant to the Port Commission's adopted policy on the siting and requirements for Wireless Telecommunications, as the same may be amended or modified from time to time. No such antennae shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of Port. Notwithstanding anything to the contrary contained in this Section 11.2, Tenant shall have the right to install two (2) satellite dishes on the exterior of the Premises not exceeding eighteen inches in diameter without first having to obtain the prior written consent of Port, provided that Tenant obtains all necessary Regulatory Approvals and complies with all applicable Laws.

11.3 Utility Service Providers. At Port's request, Tenant shall purchase (i) all of its electricity and gas for the Improvements from the City utility company, Hetch Hetchy Water & Power, and (ii) all of its phone, telecommunication, and other utility services from the City, in each case at then prevailing market rates for comparable types of load or capacity so long as it is reasonably available for Tenant's needs, provided that Tenant, under no circumstances shall have

an obligation to purchase such services from the City if the level of service is materially less, or the price paid is materially more, than that available on the open market. Notwithstanding the foregoing, Tenant reserves all rights and remedies as may be available at law or equity against the providers of such services for any failure of the City's utility to deliver such utility services. Further, notwithstanding anything to the contrary in the foregoing, should at any time during the Term Tenant find a utility service provider who can supply a utility service in a substantially better manner or at a substantially and materially better price and level of service than the City, Tenant shall be released from any continuing obligation to receive such services from the City and to make such changes as Tenant may elect. In addition, nothing in this Lease shall serve to prohibit or restrict Tenant from constructing or installing co-generation power equipment and facilities on the Premises and using such facilities and equipment to serve all or a portion of the utility needs for the Premises, subject to obtaining all necessary Regulatory Approvals therefor.

SECTION 12. DAMAGE OR DESTRUCTION

12.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Section.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, which (i) could materially impair use or operation of the Improvements for their intended purposes for a period of thirty (30) days or longer or (ii) exceeds in an individual instance the amount of Five Thousand Dollars (\$5,000) or aggregate amount of Twenty Thousand Dollars (\$20,000), Tenant shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to Port describing with as much specificity as is reasonable, given the ten-day time constraint, the nature and extent of such damage or destruction.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, Port and Tenant each hereby waives the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

12.2 Rent after Damage or Destruction. If there is any damage to or destruction of the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise specifically provided in Section 12.4. In the event of any damage or destruction to the Improvements, whether or not such damage or destruction results in a termination of this Lease, Tenant shall continue to pay to Port all Rent at the times and in the manner described in this Lease during any period of Restoration by Tenant or until Tenant or Port terminates this Lease pursuant to Section 12.4 below.

12.3 Tenant's Obligation to Restore. If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or

Destruction for which Tenant elects to terminate this Lease under Section 12.4, then Tenant shall, subject to Section 12.4 hereof, within a reasonable period of time, commence and diligently, subject to Force Majeure, Restore the Improvements to substantially the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades), subject to the amount or availability of insurance proceeds. All Restoration performed by Tenant shall be in accordance with the procedures set forth in Section 10 relating to Subsequent Construction and shall be at Tenant's sole expense.

12.4 Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction or Uninsured Casualty occurs at any time during the Term, then Tenant shall provide Port with a written notice (the "**Casualty Notice**") either (1) electing to commence and complete Restoration of the Improvements to substantially the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Law (including any required code upgrades); or (2) electing to terminate this Lease (subject to Section 12.4(b)). For purposes hereof, "Uninsured Casualty" will mean any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured or insurable under the policies of insurance that Tenant is required to carry under Section 18 hereof, or (2) an event of damage or destruction occurring at any time during the Term which is covered under Tenant's policies of insurance that Tenant is required to carry under Section 18 hereof, but where the cost of Restoration (including the cost of any required code upgrades) will exceed the net proceeds of any insurance payable plus the amount of any applicable policy deductible. Any event of damage or destruction not insured due to Tenant's failure to maintain the requisite insurance policies under Section 18 (or Tenant's election to discontinue or omit earthquake insurance in accordance with Section 18.1(b)(iii)) shall not be considered an Uninsured Casualty. Tenant shall provide Port with the Casualty Notice no later than one hundred eighty (180) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Section 10 that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements to substantially the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Construction.

(b) Condition to Termination; Payment of Insurance Proceeds. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 12.4(a) above, Tenant, in its election to terminate described in Section 12.4(a), shall state the cost of Restoration, and the amount by which the cost of Restoration exceeds insurance proceeds payable plus the amount of any applicable policy deductible. Upon receipt by Tenant of any insurance proceeds paid of such casualty for any Capital Improvements, Tenant shall promptly pay or cause to be paid the following amounts, in the following order of priority:

(1) first, to Port (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred by Port for any work required to alleviate any conditions caused by such event of damage or destruction that could cause an immediate or imminent threat to the public safety and welfare or damage to the environment, including without limitation, any demolition or hauling of rubble or debris;

(2) second, to Port, which portion is an amount equal to all accrued and unpaid Base Rent (including all accrued interest and late fees and taking into account any accrued Rent Credit) owed by Tenant to Port under this Lease to the date of termination;

~~(4)~~(3) third, to Port in the amount accrued and owed to Port, if any, by Tenant on account of Tenant's obligations hereunder as of the date of the event of damage or destruction not otherwise paid to Port under 12.4(b)(2); and

~~(5)~~(4) fourth, the balance of the proceeds shall be divided proportionately between Port, for the value of Port's reversionary interest in the Property and Improvements (in their condition immediately prior to the event of damage or destruction) as of the date the Term would have expired but for the event of damage or destruction less the value of the Improvements retained by the Port, if any, in their condition immediately after the event of damage or destruction, and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term (in their condition immediately prior to the event of damage or destruction).

Upon termination of the Lease, Tenant shall deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and any remaining Improvements.

12.5 Effect of Termination. If Tenant elects to terminate the Lease under Section 12.4(a) above, then this Lease shall terminate on the date that Tenant shall have delivered to Port notice of Tenant's election to terminate and the statement of cost of Restoration as described in the first sentence of Section 12.4(b). Upon such termination, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination subject to payment to Port of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. Port's right to receive insurance proceeds under this Lease shall survive the termination or expiration of the Lease. At Port's request following any termination, Tenant shall deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Port.

12.6 Distribution Upon Lease Termination. If Tenant is obligated to Restore the Improvements as provided herein and commits an Event of Default in failing to so Restore the

Improvements, and this Lease is thereafter terminated due to such Event of Default, all insurance proceeds held by Port and Tenant or not yet collected, shall be paid to and retained by Port.

12.7 Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all all-risk coverage insurance proceeds, flood proceeds and boiler and machinery insurance proceeds paid to Port and/or Tenant by reason of damage to or destruction of any Improvements, if any, must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Section 12.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Section 12, if Tenant Restores the Improvements, then any insurer paying compensation in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00) under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to a trustee (which shall be a bank or trust company) designated by Port within twenty (20) days after written request by Tenant, having an office in San Francisco. Unless agreed otherwise by the Parties, the insurer shall pay insurance proceeds of Five Hundred Thousand and No/100 Dollars (\$500,000.00) or less directly to Tenant for purposes of Restoration in accordance with this Lease. If the funds are paid to a trustee in accordance herewith, the trustee shall hold all insurance proceeds in an interest-bearing federally insured account (with interest added to the proceeds). However, such trustee shall pay to Tenant, from time to time as the work of rebuilding, Restoration and repair shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such repairs, rebuilding and Restoration. The Port shall instruct the trustee to pay Tenant the cost of any emergency repairs necessitated by the event of damage or destruction in advance of the actual Restoration within thirty (30) days of such request. The trustee shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration or repair of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured. Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that no uncured Event of Default (or unmatured Event of Default) that has not been waived by Port shall exist on the date such damage is repaired, the Improvements shall have been Restored in accordance with the provisions of this Section 12 and all sums due under this Lease shall have then been paid in full, any excess of monies received from insurance remaining with the trustee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

12.8 No Release of Tenant's Obligations. No damage to or destruction of the Premises or Improvements or any part thereof for fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

12.9 Arbitration of Disputes.

(a) Procedure. If Port and Tenant cannot mutually agree upon the cost of Restoration or the cost of replacing the Improvements under Section 12.4(a), or if Port disputes Tenant's determination allowing for termination under Section 12.4(a), or if the Parties cannot agree upon the amount of Rent abatement under Sections 13.3(a) and (b), or if there is a dispute regarding matters described under Section 2.6 of the Work Letter, such disputes shall be determined in the manner provided in this Section 12.9. Either Party may invoke the provisions of this Section 12.9 at any time after such Party has made a good faith effort to resolve the disputed matter with the other Party, by delivering written notice to the other Party. Within twenty (20) business days after delivery of notice invoking the provisions of this Section, each Party shall provide, by written notice to the other Party, a list of its three preferred Estimators (as defined in subparagraph (b) below) in order of descending preference along with a description of the qualifications of each such Estimator and any past or current relationships between the Estimator and the Party. Either Party shall have the right to directly contact any of the Estimators nominated by the other Party to obtain further information about such Estimator's qualifications or relationship to the other Party. Within thirty (30) days after delivery of the notice invoking the provisions of this Section, the two Parties shall meet and mutually agree upon one Estimator from among the six (6) nominees, attempting to select the highest-ranking nominee from either list. If the Parties are unable to mutually agree upon an Estimator within fifteen (15) days thereafter, either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an Estimator from among the list of six (6) nominees. If the court denies or otherwise refuses to act upon such application, either Party may then apply to the American Arbitration Association, or any similar provider of commercial arbitration services, for appointment of an Estimator from among the list of six (6) nominees. If either Party fails to provide a list of Estimators to the other Party as required herein, the other Party shall select the highest-ranking Estimator stated on such Party's list of three (3) nominees. The appointed Estimator shall make a final, written determination within twenty (20) days of appointment. The fees of the Estimator and any court or arbitration fees (but not attorneys' fees or other consulting fees incurred by either Party) shall be borne equally by both Parties. The determination of the Estimator shall be conclusive and binding on both Parties.

With respect to certain disputes as expressly set forth in this Lease, the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY

INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Port's Initials

Tenant's Initials

Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either Party to seek confirmation, correction or vacation of the arbitration award pursuant to California Code of Civil Procedure Section 1285 et seq.

(b) Qualifications of Estimator. As used herein, the term "Estimator" shall mean a licensed general contractor having at least ten (10) years experience in estimating construction costs of major construction projects in the City to estimate the cost or amount in dispute, and for disputes regarding time to complete Restoration under Section 12.4(a), also having at least the equivalent amount of experience in commercial real estate development matters. Each such Estimator shall be competent, licensed, qualified by training and experience in the City, disinterested and independent.

SECTION 13. CONDEMNATION

13.1 General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Section 13

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result there from, as the case may be.

(c) Waiver. Except as otherwise provided in this Section 13, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Section 13, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such Section may from time to time be amended, replaced or restated.

13.2 Total Condemnation. If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "**Total Condemnation**"), this Lease shall terminate as of the Condemnation Date.

13.3 Substantial Condemnation, Partial Condemnation. If there is a Condemnation of any portion but less than all of the Premises for the balance of the Term, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation (as defined below) of a portion of the Premises or Tenant's leasehold estate, this Lease shall terminate, at Tenant's option, as of the Condemnation Date, as further provided below. For purposes of this Section 13, a Condemnation of less than the entire Premises or of less than Tenant's leasehold estate, or of such property in the vicinity of the Premises which significantly impairs access or eliminates all reasonably convenient access to the Premises, or which causes a failure or significant and material impairment of any utility services necessary or reasonably desirable for the continued operation of the type and style of Permitted Uses contemplated by the Parties, shall be a Substantial Condemnation if Tenant reasonably determines that such Condemnation renders the Premises untenable, unsuitable or economically infeasible for the Permitted Uses. Upon a Substantial Condemnation, this Lease shall terminate, at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port). In the event Tenant does not elect to terminate the Lease, however, the Lease shall terminate only as to the portion of the Premises taken and Base Rent shall be adjusted in accordance with the provisions of Section 13.3(b), and in addition, Base Rent shall be abated during the period necessary for the performance of any Restoration in an equitable amount to reflect the diminution in fair market rent for the Premises during the period of such Restoration, as mutually determined by the Parties, or in the absence of an agreement between the Parties, in accordance with the dispute resolution procedures provided under Section 12.9.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or Tenant's leasehold estate which does not result in a termination of this Lease under Section 13.2 or Section 13.3(a) (a "**Partial Condemnation**"), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, or in the case of a Substantial Condemnation which does not result in a termination of this Lease, the Base Rent for the remainder of the Premises shall be adjusted to reflect the diminution in value of the remaining portion of the Premises as of the Condemnation Date. Such Base Rent adjustment shall be

separately computed with respect to (i) the temporary period during which any necessary Restoration will be performed; and (ii) the period following completion of any necessary Restoration. The Parties shall first negotiate in good faith in an attempt to determine by agreement the appropriate adjustment. If the Parties do not reach agreement within thirty (30) days following the Condemnation Date, the adjustment(s) shall be resolved pursuant to the dispute resolution procedures provided under Section 12.9 above. In the case of a Partial Condemnation, this Lease shall remain in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Condemnation, and Tenant shall promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration shall be performed in accordance with the provisions of Section 10.

13.4 Awards. Except as provided in Section 13.1(a) and in Sections 13.5 and 13.6, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including, without limitation, reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") shall be allocated between Port and Tenant as follows:

(a) In the event of a Partial Condemnation, first, to pay costs of Restoration incurred by Tenant, in which case, the portion of the Net Awards and Payments allocable to Restoration shall be payable to Tenant or trustee in accordance with the requirements governing payment of insurance proceeds set forth in Section 12.7(b);

(b) Second, to Port from the share otherwise allocated to Tenant, in an amount equal to any accrued and unpaid Base Rent (including all accrued interest and late fees) owed by Tenant to Port under this Lease for periods prior to the Condemnation Date;

(c) Third, to Port for the value of the condemned land only, considered as unimproved and encumbered by this Lease and subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and without reference to, or inclusion of, Port's reversionary interest in the value of the Improvements;

(d) Fourth,

(i) Tenant shall receive an amount equal to the value of Tenant's leasehold interest in this Lease, not including the value of the Improvements on the Premises, for the remaining unexpired portion of the Term to the original scheduled Expiration Date, and

(ii) The balance of the Net Payment and Award shall be divided proportionately between Port, for the value of Port's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date.

13.5 Temporary Condemnation. If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term of this Lease, other than in

connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease shall remain in full force and effect, there shall be no abatement of Rent, and the entire Award shall be payable to Tenant.

13.6 Personal Property. Notwithstanding Section 13.4, Port shall not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant, or any moving expenses, loss of goodwill or business loss or interruption of Tenant, severance damages with respect to any portion of the Premises and Improvements remaining under this Lease, or other damages suffered by Tenant.

SECTION 14. LIENS

14.1 Liens. Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, Subleases that have been approved by the Port in accordance with Section 16, and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions, except only for Impositions being contested as permitted by Section 5, (iii) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Section 5. Nothing in this Section 14.1 or elsewhere in this Lease shall apply to liens created or security interests granted in any personal property or accounts receivable (other than rents) of Tenant or any subtenant.

14.2 Mechanics' Liens. Nothing in this Lease shall be deemed or construed in any way as constituting the request of Port, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant shall take such action as may be reasonably required by Port or under any Law in existence or hereafter enacted which will prevent the enforcement of any mechanics' or similar liens against the Premises, Tenant's leasehold interest, or Port's fee interest in the Premises for or on account of labor, services or materials furnished to Tenant, or furnished at Tenant's request. Tenant shall provide such advance written notice of any Subsequent Construction such as shall allow Port from time to time to post a notice of non-responsibility on the Premises. If Tenant does not, within thirty (30) days following Tenant's receipt of actual notice of the imposition of any such lien, cause the same to be released of record (or bonded around), Port shall have the right to declare an Event of Default by Tenant, and, in addition to any other remedy provided in this Lease or under Laws, to obtain and record a lien release bond in the appropriate amount at Tenant's expense. All sums paid by Port for such purpose and all reasonable expenses incurred by Port in connection therewith shall be payable to Port by Tenant within thirty (30) days following written demand by Port.

SECTION 15. SECURITY DEPOSIT

15.1 Generally. On or before the Commencement Date, Tenant shall pay to Port, in addition to Rent, a cash Security Deposit (the "**Security Deposit**") in an amount equal to Five Thousand Dollars (\$5,000), for Tenant's obligations to pay Rent maintain and repair the

Premises, and legal and administrative expenses as described in subparagraphs a-d below. Tenant agrees that upon the occurrence of an Event of Default Port may, but shall not be required to, apply the Security Deposit in whole or in part to (a) remedy any failure by Tenant to pay Rent, including any and all Additional Rent, payable by Tenant hereunder, as and when due, (s) cure any default by Tenant in the performance of its repair and maintenance obligations or the faithful performance of any other terms, covenants and conditions of this Lease, (t) repair any damage to the Premises caused by Tenant, its Agents or Invitees, or (u) reimburse itself or pay any third party invoices, as the case may be, for any reasonable legal and/or administrative costs incurred by or on behalf of Port as a result of or due to Tenant's failure to perform any covenants, conditions or obligations under this Lease or Transfer of this Lease pursuant to Section 16 below. Should Port use any portion of the Security Deposit for any of the aforementioned reasons, Tenant shall replenish the Security Deposit to the original amount, within thirty (30) days following Port's demand. Port's obligations with respect to the Security Deposit are solely that of debtor and not trustee. Port shall not be required to keep the Security Deposit separate from its general funds. Tenant shall not be entitled to any interest on the Security Deposit. The amount of the Security Deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease. Port may apply the Security Deposit as provided herein without waiving any of Port's other rights and remedies hereunder or at law or in equity. Upon the expiration or earlier termination of this Lease, Port shall return the unused balance of the Security Deposit to Tenant (less any amounts then due and payable from Tenant to Port under this Lease) within fourteen (14) days after Tenant surrenders possession of the Premises to Port.

15.2 Fee for Removal of Improvement. Prior to commencement of this Lease, Tenant shall deliver to Port a cash fee equal to the estimated current cost of removing all of the Improvements on the Premises in the amount of Fifteen Thousand Dollars (\$15,000.00), which amount shall be increased from time to time to reflect Port's reasonable estimate of the then current costs of removing the Improvements on the Premises (the adjusted amount shall be referred to herein as the "**Removal Fee**"). If Port directs Tenant to remove any or all of the Improvements pursuant to Section 9.2, Port shall reimburse Tenant for its actual out-of-pocket costs related to the cost of such removal upon completion of such work up to the maximum amount of the Removal Fee; provided that Tenant provides Port documentation of such costs in a manner and form as is required of Tenant for Construction Costs under Section 2.9. Any excess unreimbursed costs of removal shall be borne fully by Tenant. If the costs of removal are less than the amount of the Removal Fee, Port shall reimburse Tenant such excess but only if Port has directed to Tenant to remove one hundred percent (100%) of the Tenant Improvements. Port shall retain any Removal Fee in excess of the Tenant's actual removal costs if Port directs Tenant to remove only some of the Improvements, notwithstanding the fact that such excess Removal Fee may prorata be greater than then current costs of removing the remaining Improvements. If Port does not direct Tenant to remove any or all of the Improvement under Section 9.2, Port shall keep one hundred percent (100%) of the Removal Fee upon termination of the Lease. Tenant acknowledges and agrees that the Removal fee is a charge, equivalent to Rent, and Port has no obligation to refund or reimburse Tenant such Removal Fee except as specifically set forth in this Section 15.2. No interest shall accrue or be factored to accrue upon the Removal Fee.

SECTION 16. ASSIGNMENT AND SUBLETTING

16.1(a) Consent of Port. Except as otherwise expressly required in Section 16.1(b) or (c) below, Tenant and its successors and permitted assigns shall not (i) suffer or permit any Significant Change to occur, or (ii) transfer or assign any interest in this Lease ("**Transfer**") or (iii) Sublease all or any portion of the Premises, either voluntarily or by operation of law, without the prior written consent of Port, which consent shall not be unreasonably withheld or delayed by Port after Completion, but may be withheld by Port in its sole and absolute discretion before Completion. Tenant may not sublease any portion of the Premises at any time during the Term. Any Transfer of the Lease described in this Section 16.1 is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof:

(i) Any proposed transferee, by instrument in writing reasonably approved by the Port, for itself and its successors and assigns, and expressly for the benefit of Port, must agree to be subject to all of the conditions and restrictions to which Tenant is subject and, in the case of any assignee of an interest in this Lease, must expressly assume: (A) all of the obligations of Tenant and its Affiliates, arising from and after the effective date of the Transfer, under this Lease and any other agreements or documents entered into by and between Port and Tenant relating to the Premises, (B) all of the obligations of Tenant and its Affiliates set forth in any Regulatory Approval applicable to the Premises, and (C) any liability arising from or with regard to any unperformed obligations of Tenant and its Affiliates, under this Lease and any other agreements or documents entered into by and between Port and Tenant relating to the Premises. The obligations and liabilities set forth in clauses (A) and (B) of the immediately preceding sentence are hereinafter collectively referred to as the "**Assignee's Assumption Obligations**". It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that Port would have had, had there been no such Transfer;

(ii) All instruments and other legal documents involved in effecting the Transfer shall have been submitted to Port for review, including the agreement of sale, transfer, sublease or equivalent, and the Port shall have approved such documents in accordance with the standards set forth in this Section 16.1(a);

(iii) There shall be no Event of Default on the part of Tenant under this Lease or any of the other documents or obligations to be assigned to the proposed transferee, or if not cured, Tenant or the proposed transferee have made provisions to cure of the Event of Default, which provisions are satisfactory to Port in its sole discretion;

(iv) The proposed transferee has demonstrated to Port's reasonable satisfaction that it is capable, financially and otherwise, of performing each of Tenant's

obligations under this Lease and any other documents to be assigned and of conducting environmental education programs consistent with this Lease;

(v) The proposed Transfer is a lawfully organized non-profit organization; and

(vi) The proposed transferee is subject to the jurisdiction of the courts of the State of California.

(b) Assignment at Port's Election. Notwithstanding anything to the contrary in this Section 16, in the event Port elects the Assignment Remedy pursuant to Section 23.5 below, Tenant shall assign to the party approved by the Port in its sole and absolute discretion all (and no less) of Tenant's interest, rights, and title in and to this Lease by way of the Assignment and Assumption Agreement attached hereto as Exhibit H, in accordance with Section 23.5. The Port shall release Tenant of all of its obligations under this Lease by executing and recording the Port Release attached hereto as Exhibit I; provided, that the (i) conditions of Section 23.5 have been satisfied to the Port's reasonable satisfaction; (b) Assignment and Assumption Agreement has been, or will be concurrently with the Port Release, duly executed and delivered.

(c) Release of Tenant's Liability by Virtue of Consent. The consent by Port to a Transfer of this Lease hereunder shall, from and after the date of such Transfer, relieve the transferor Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder after the date of such Transfer, but shall not relieve the transferor Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder prior to the date of such Transfer, or the transferee of Tenant from its obligation to obtain the express consent in writing of Port, in its sole discretion, to any further Transfer or to any Significant Change as otherwise provided herein.

(d) Notice of Significant Changes; Reports to Port. Tenant must promptly notify Port of any and all Significant Changes. At such time or times as Port may reasonably request, Tenant must furnish Port with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

(e) Determination of Whether Consent is Required. At any time Tenant may submit a request to Port for the approval of the terms of a Transfer, Sublease or Significant Change (all of the foregoing being collectively referred to herein as a "**Proposed Transfer**") or for a decision by Port as to whether in its opinion a Proposed Transfer requires Port consent under the provisions of this Section 16. Within thirty (30) days of the making of such a request and the furnishing by Tenant to Port of all documents and instruments with respect thereto as shall be reasonably requested by Port, Port must notify Tenant in writing of Port's reasonable business grounds for its approval or disapproval of the Proposed Transfer or of Port's determination that the Proposed Transfer does not require Port's consent. If Port disapproves the Proposed Transfer or determines that it requires the consent of Port, as applicable, it must specify

in detail the grounds for disapproval or its reason that consent is required, as applicable which grounds and reasons shall be consistent with the provisions of this Lease.

(f) Scope of Prohibitions on Assignments and Subleasing. The prohibitions provided in this Section 16.1 will not be deemed to prevent the granting of any security interest expressly permitted by this Lease for financing or refinancing Tenant's personal property to be used at or in the Premises, subject to compliance with Section 38 and other applicable terms of this Lease.

(g) Participation in Transfer Proceeds. In the event that either (i) Tenant Transfers a majority interest in this Lease or leasehold estate to a Person who is not an Affiliate, or (ii) a Significant Change occurs with respect to the ownership of the beneficial interests in Tenant (either constituting a "Sale"), Tenant shall pay to the Port fifty percent (50%) of any Transfer Proceeds received by Tenant. No less than 15 days prior to a Sale, Tenant will deliver to Port, an estimated closing statement that includes the best estimate of the estimated net sales proceeds, identifying all Cash Consideration and non-cash consideration to be received by Tenant. Tenant shall pay the actual net sale proceeds at the close of escrow of any Sale.

SECTION 17. INDEMNIFICATION OF PORT

17.1 Indemnification of Port. Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or Port's interest therein in connection with the occurrence or existence of any of the following: any accident, injury to or death of Persons or loss or damage to property occurring on the Premises which is caused directly or indirectly by Tenant or any of its Subtenants, operators, Agents or Invitees; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof or near or around the Premises by Tenant or any of its Subtenants, operators, Agents or Invitees, (iv) any latent, design, construction or structural defect relating to the Initial Improvements and any Subsequent Construction by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Subtenants, operators, Agents or Invitees; (v) any failure on the part of Tenant or its Agents, Subtenants or operators, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits as required under this Lease; (vi) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Subtenants, operators, Agents or Invitees; and (vii) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use and occupancy of the Premises after the Commencement Date; except in each case to the extent caused or contributed to by the negligence or willful misconduct of City, Port or any of their Agents or Invitees.

17.2 Immediate Obligation to Defend. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 17.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent

or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter; provided, however, that in the event of a final judgment determining that all or a portion of the claim fell outside the scope of Tenant's indemnity, the Port shall reimburse Tenant for that portion of costs, fees and expenses, including reasonably attorneys' fees, expended by Tenant hereunder that was determined to be outside the scope of the indemnity. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding within a reasonable time of such Indemnified Party obtaining notice of such claim, or obtaining facts sufficient to constitute inquiry notice for a reasonable Person, and thereafter shall cooperate in good faith with Tenant in the defense of such claim at no cost to Port or such Indemnified Party. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

17.3 Not Limited by Insurance. The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under Section 17.1 or any other indemnification provision of this Lease.

17.4 Survival. Tenant's obligations under this Section 17 and any other indemnity in this Lease shall survive the expiration or sooner termination of this Lease.

17.5 Other Obligations. The agreements to Indemnify set forth in Section 17 and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise.

17.6 Defense. Tenant shall, at its option but subject to the reasonable consent and approval of the Port, be entitled to control the defense, compromise, or settlement of any indemnified matter through counsel of the Tenant's own choice (subject to Port's reasonable approval of joint counsel); provided, however, in all cases the Port shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Tenant shall fail, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging and describing in reasonable detail the nature of such failure, to take reasonable and appropriate action to defend such suit or claim, Port shall have the right promptly to use the City Attorney or to hire outside counsel to carry out such defense, at Tenant's sole expense, which expense shall be due and payable to the Port within thirty (30) days after receipt by the Tenant of an invoice therefor. However, any such actions by Port to take over and prosecute the defense of such indemnified matter shall not permit Port to settle or compromise any claim affecting Tenant without Tenant's express written consent.

17.7 Release of Claims and Losses Against Port. Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Port and the other Indemnified Parties from any Losses including damages to or loss of goods, wares, goodwill, merchandise, business opportunities, and equipment and by Persons in, upon or about

the Premises for any cause arising at any time after the Commencement Date, but excluding any claims arising from Port's breach of this Lease, any negligence or willful misconduct of the Port or other Indemnified Parties or claims for which Port has otherwise agreed to indemnify Tenant hereunder, and further excluding any claims, demands, or causes of action Tenant may now or hereafter have against the Port for rights of contribution or equitable indemnity under applicable Laws.

SECTION 18. INSURANCE

18.1 Premises and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to Port, obtain, maintain and cause to be in effect at all times (except as provided below) from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises, the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times prior to Completion of the Initial Improvements and during any period of Subsequent Construction, Tenant shall maintain, on a form reasonably approved by Port, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards, water damage (including groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 18.1(b)(iv)(A)), including as named insureds Port, Tenant and Tenant's contractors and subcontractors with any deductible not to exceed Twenty-Five Thousand and 00/100 Dollars (\$25,000).

(ii) Premises Insurance; Earthquake and Flood Insurance. Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss – Special Form", or its replacement), including earthquake, subject to provisions of Section 18.1(b)(iii), and flood, subject to the provisions of Section 18.1(b)(iv), in an amount not less than 100% of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage), with any deductible not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00), as long as such coverage is commercially reasonable. If such coverage is not commercially reasonable, Tenant shall submit to the Port written evidence thereof from a qualified insurance broker.

(iii) Commercial General Liability Insurance. Tenant shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 10 93 (or its replacement), insuring against claims for bodily injury (including death), property damages, personal injury and advertising liability occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto occurring on the Premises or any part of the Premises, such insurance to afford protection in an amount not less than Two Million And No/100 Dollars (\$2,000,000.00) each occurrence and annual aggregate,

covering bodily injury and broad form property damage including contractual liability (which includes coverage of the indemnity obligations in Section 17.1(i)), independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage. Any such insurance coverage shall have a deductible of no more than \$1,000 per occurrence. If Tenant is unable to find insurance coverage with such a deductible amount, it shall present written evidence of such unavailability to Port, which, in its sole and absolute discretion, may accept a higher deductible amount for which Tenant is able to find insurance coverage.

(iv) Workers' Compensation Insurance. During any period in which Tenant has employees as defined in the California Labor Code, Tenant shall maintain policies of workers' compensation insurance in amounts required by Laws, and employer's liability coverage with limits not less than \$1,000,000 each accident, covering all persons employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements. In addition, if any employees of Tenant are eligible for U.S. Longshore and Harbor Workers' Act benefits or Jones Act benefits, Tenant shall maintain coverage for such benefits, as applicable, with limits not less than One Million Dollars (\$1,000,000).

(v) Business Automobile Insurance. Tenant shall maintain, and cause its Subtenants, operators and Agents to maintain, policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used in connection with such Person's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Premises Damage policy with limits of not less than One Million And No/100 Dollars (\$1,000,000) per accident.

(vi) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant shall maintain, or cause its contractor or consultant to maintain, environmental pollution or pollution legal liability insurance, on an occurrence form, with limits of not less than One Million Dollars (\$1,000,000.00) each loss and annual aggregate for Bodily Injury and Premises Damage.

(vii) Professional Liability. Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for the Initial Improvements or any Subsequent Construction to maintain professional liability (errors or omissions) insurance, with limits not less than One Million And No/100 Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor and a deductible of not more than Fifty Thousand Dollars (\$50,000) per claim.

(viii) Materialman's Completion Bond. Before Tenant shall commence construction of the Tenant Improvements, and before any building materials have been delivered to the Premises by Tenant or under Tenant's authority, Tenant shall furnish to Port a materialman's completion bond "Materialman's Completion Bond", issued by a responsible surety company, satisfactory to Port in Port's reasonable discretion, licensed to do business in California, in an amount not less than the final construction contract bid. The Materialman's

Completion Bond shall remain in effect until the entire cost of the work shall have been paid in full and the new improvements shall have been insured as provided in this Lease. The Materialman's Completion Bond shall state the following:

(1) That it is conditioned to secure the completion of the proposed construction, free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen;

(2) That the construction work shall be effected by Tenant, the general contractor, or, on their default, the surety;

(3) That upon default of such completion and payment, such part of the amount of the bond as shall be required to complete the work shall be paid to Port as liquidated and agreed damages for the nonperformance of Tenant's agreements, it being agreed that the exact amount of Port's damages is difficult and impractical to ascertain; and

(4) That the surety will defend and indemnify Port against all loss, cost, damage, expense, and liability arising out of or connected with the Tenant Improvements.

Tenant's failure to provide a Materialman's Completion Bond in accordance with this Subsection 8 shall prevent the effectiveness of this Lease.

(b) General Requirements.:

(i) All insurance provided for pursuant to this Section shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A-VI or better (or a comparable successor rating) and legally authorized to sell such insurance within the State;

(ii) As to property insurance only, such insurance shall name the Port as loss payee as its interest may appear, and as to both property and liability insurance, such insurance shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS AND EMPLOYEES."

(iii) As to flood insurance only, such insurance shall be in an amount of no less than Five Hundred Thousand Dollars (\$500,000), from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make such flood insurance available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco.

(iv) All insurance provided for pursuant to this Section shall be evaluated by Port for adequacy not less frequently than every five (5) years from the anniversary date of Completion of the Initial Improvements. Port may, upon not less than ninety (90) days prior written notice, require Tenant to promptly increase the insurance limits for all or any of its general liability policies if, in the reasonable judgment of the City's Risk Manager, it is the

general commercial practice in San Francisco County to carry insurance for facilities similar to the Premises and in locations similar to the Property in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises and that such increased insurance is commercially available at reasonable rates taking into consideration the coverage limits and the deductible amounts offered at such rates. If the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In either such event, Tenant shall promptly deliver to Port a certificate evidencing such new insurance amounts.

(v) All insurance provided for pursuant to this Section shall provide that no cancellation or termination of such insurance for any reason (except for non-payment of premium) shall be effective until at least thirty (30) days (ten (10) days for non-payment of premium) after mailing or otherwise sending written notice of such cancellation, modification or termination to Port;

(vi) As to Commercial General Liability only, such insurance shall provide that it constitutes primary insurance to any other insurance available to any additional insured, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

(vii) As to property insurance required hereunder or carried by a Party, such insurance shall provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 18.1;

(viii) All insurance provided for pursuant to this Section shall be subject to the reasonable approval of the Port;

(ix) If any of the liability insurance required to be carried by Tenant hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease; and

(x) As to property insurance only, such insurance shall provide (if an endorsement to such effect is available at a commercially reasonable cost) that all losses payable under all such policies that are payable to Port shall be payable notwithstanding any act or negligence of Tenant.

(c) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant shall furnish Port certificates with respect to the policies required under this Section, together with copies of each such policy (if Port so requests) and evidence of payment of premiums, within thirty (30) days after the Commencement Date and, with respect to renewal policies, at

least ten (10) business days after the expiration date of each such policy. If at any time Tenant fails to maintain the insurance required pursuant to Section 18.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within ten (10) days following demand, Tenant shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies name Tenant and Port as additional insureds.

18.2 Port Entitled to Participate. Port shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Fifty Thousand and No/100 Dollars (\$50,000.00) covered by the insurance required to be carried hereunder, but only to the extent that its interest may appear; provided, however, that (i) Port's consent shall not be unreasonably withheld, and (ii) no consent of Port shall be required in connection with any such settlement, compromise or agreement concerning damage to all or any portion of the Improvements if Tenant shall have agreed in writing to commence and complete Restoration.

18.3 Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any Losses occasioned to the property of each such Party, which Losses are either of the type (a) that are covered under the property policies required by Sections 18.1(a)(i), (ii), or (v), or (b) that are covered under property insurance policies actually carried by such Party, or (c) that would be covered under property insurance policies equivalent to those required to be carried by Tenant under this Lease if the Party had carried such insurance.

SECTION 19. HAZARDOUS MATERIALS

19.1 Hazardous Materials Compliance.

(a) Compliance with Hazards Materials Laws. Tenant shall comply and cause (i) its Agents (ii) its Subtenants, (iii) all Invitees or other Persons entering upon the Premises (other than the Port, the City, and their Agents), and (iv) the Premises, to comply with all Hazardous Materials Laws and prudent business practices, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Port which may be granted in Port's sole discretion, Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials

which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction and operation of the Improvements, or any Subsequent Construction, and which are reported to, and approved by Port prior to any such Handling and, in any case, are used in strict compliance with all applicable laws, (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general office purposes so long as such Handling is at all times in full compliance with all Hazardous Material Laws, and (E) pre-existing Hazardous Materials that are required by Law or prudent business practices to be Handled for Remediation purposes .

(b) Notice. Except for Hazardous Materials permitted by Section 19.1(a) above, Tenant and Port shall advise the other in writing promptly (but in any event within five (5) days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant or Port in response to any (A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's or Port's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant and Port shall inform the other orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide each other with copies of all communications (other than privileged communications) with federal, state and local governments or agencies relating to Hazardous Materials Laws and all communication with any Person relating to Hazardous Materials Claims.

(c) Port's Approval of Remediation. Except as required by law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to Port for Port's approval, which approval shall not be unreasonably withheld, conditioned or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. Port shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor within sixty (60) days after receipt thereof. If Port disapproves of any such Hazardous Materials Remediation plan, Port shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises and the operations and use thereof. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Hazardous Materials Laws, (y) to the reasonable satisfaction of the Port, and (z) in accordance with the orders and directives of all federal, state and local governmental authorities, including but not limited to, the RWQCB and the San Francisco Department of Public Health.

(d) Pesticide Prohibition. Tenant shall comply with the provisions of Chapter 3 of the San Francisco Environmental Code (the "IPM 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 the Sheriff's Department 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 300 of the IPM Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with Port.

19.2 Hazardous Materials Indemnity. Without limiting the indemnity in Section 17.1, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time on or after the Commencement Date and before the surrender of the Premises by Tenant, any Subtenant, operator or any other Person (other than Port, its Agents or Invitees) directly or indirectly arising out of (A) the Handling, transportation or Release of Hazardous Materials by Tenant, or its Subtenants, Agents or Invitees or any Person on or in the Premises other than the Port and its Agents and Invitees excepting there from Hazardous Materials located in, on or under the Premises prior to the Commencement Date except to the extent that Tenant, its Subtenants, or Agents disturbs or exacerbates such pre-existing conditions of which Tenant has been notified in writing or to the extent that the Handling or Remediation of such pre-existing Hazardous Materials is required by Regulatory Agencies having jurisdiction as a result of activities or uses of the Premises permitted or conducted by Tenant, its Subtenants, Agents or Invitees, or (B) any failure by Tenant or its Subtenants, Agents or Invitees to comply with Hazardous Materials Laws, except with respect to the acts or omissions of any Indemnified Party or its Agents and Invitees. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to Port hereunder and shall be due and payable from time to time immediately upon Port's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises or the discovery of the disturbance or exacerbation of the pre-existing condition, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

SECTION 20. REPRESENTATIONS AND WARRANTIES OF TENANT

Tenant represents, warrants and covenants to Port as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence, Good Standing. Tenant is a corporation duly organized and validly existing under the laws of the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this

Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Port and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code, and (iv) Tenant has not suffered any material adverse change to its financial condition that could reasonably effect its ability to perform its obligations under this Lease.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

SECTION 21. NO JOINT VENTURE

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Port and Tenant or between Port and any other Person, or cause Port to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

SECTION 22. EVENTS OF DEFAULT; TERMINATION

22.1 Events of Default. Subject to the provisions of Section 22.2, the occurrence of any one or more of the following events shall constitute an "Event of Default" under the terms of this Lease:

- (a) Tenant fails to pay Rent when due;
- (b) Tenant fails to pay any additional Capital Improvements Fee requested by Port under Section 8.1(a);
- (c) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for ten (10) days after written notice from Port, or, if such cure cannot be reasonably completed within such ten (10) day period, if Tenant does not within such ten (10) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;
- (d) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation Measures) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Port specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;
- (e) Tenant suffers or permits a Transfer of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or Subleases all or any portion of the Premises or Improvements in violation of this Lease, which event is not cured by Tenant within thirty (30) days after written demand by Port by an effective rescission of the Transfer, Sublease or Significant Change or through Port's consent, which may be given or withheld in Port's sole and absolute discretion; provided, however, that if the Transfer, Sublease or Significant Change is the result of a willful, knowing and deliberate action on the part of Tenant to make a Transfer, Sublease or Significant Change with the intent of violating Section 16.1, the thirty (30) day cure period will not apply;
- (f) Tenant engages in or allows any use not permitted hereunder which event is not cured by Tenant within thirty (30) days after written demand by Port;
- (g) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;
- (h) A writ of execution is levied on the leasehold estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days;
- (i) Tenant makes a general assignment for the benefit of its creditors; or

(j) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.3 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Port.

SECTION 23. REMEDIES

23.1 Port's Remedies Generally. Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of Port following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by law or the specific terms of this Lease), Port shall have all rights and remedies provided in this Lease or available at law or equity that are not otherwise specifically waived or limited pursuant to the terms of this Lease; provided, however, notwithstanding anything to the contrary in this Lease: (1) the remedies of Port for any Event of Default by Tenant under the requirements of the First Source and Program in Diversity Special Programs described in Section 39 below, shall be limited to the remedies provided in each such program; and (2) the remedy of the Port for Tenant's violation of Section 7.2 shall be a right to terminate the lease for failure of a condition as set forth in Section 7.2. All of Port's rights and remedies granted pursuant to this Lease shall be cumulative, and except as may be otherwise provided by applicable Law or specifically limited pursuant to this Lease, the exercise of any one or more rights shall not preclude the exercise of any others.

23.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, Port may continue this Lease in full force and effect pursuant to Civil Code Section 1951.4.

(b) No Termination. No act by Port allowed by this Section 23.2, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Port elects to relet the Premises, the rent that Port receives from reletting shall be applied to the payment of:

(i) First, all reasonable costs incurred by Port in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Premises of Tenant, costs incurred by Port in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant (but only to the extent equivalent to tenant improvements of other restaurant or business establishments providing casual and full service dining on Port property in Fisherman's Wharf), and the costs of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to Port, in addition to or other than Rent due from Tenant, taking into account any accrued Rent Credit;

(iii) Third, Rent, including any and all Additional Rent, due and unpaid under this Lease, taking into account any accrued Rent Credit;

(iv) Thereafter, any sum remaining from the rent Port receives from reletting shall be held by Port and applied to monthly installments of Rent as such amounts become due under this Lease, taking into account any accrued Rent Credit. In no event shall Tenant be entitled to any excess rent received by Port. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Port incurred in reletting, remain after applying the rent received from the reletting as provided in this Section 23.2(c), Tenant shall pay to Port, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(v) Payment of Rent. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, taking into account any accrued Rent Credit, less the rent Port has received from any reletting which exceeds all costs and expenses of Port incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

23.3 Right to Perform Tenant's Covenants. Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by Port, Port may at its sole option, but shall not be obligated to, perform or pay such obligation for and on behalf of Tenant. Nothing in this Section shall be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Port constitutes a Condemnation or an impairment of Tenant's contract with Port. If Port, at its option, pays any sum or performs any obligation required to be paid or performed by Tenant under any provision of this Lease, Tenant shall reimburse Port within thirty (30) days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Port in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of Port's demand until payment is made. Port's rights under this Section 23.3 shall be in addition to its rights under any other provision of this Lease (including, but not limited to, access to the security deposit required under Section 15 of this Lease) or under applicable Laws.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sums required to be paid by Tenant pursuant to this Lease to any Person

other than Port (other than an Imposition which Tenant is contesting pursuant to the provisions of this Lease), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following requisite written notice in accordance with Section 22.1, then Port may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant. Notwithstanding the foregoing, however, if within such period, Tenant gives Port notice that such failure is due to a contest under Section 5, or that cure of such failure cannot reasonably be completed within such period, then Port will not pay such sum or perform such obligation during the continuation of such contest or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure.

If pursuant to the provisions of Section 18.1(c) or this Section 23.3, Port pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Port within thirty (30) days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Port in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of Port's demand until payment is made. Port's rights under this Section 23.3 shall be in addition to its rights under any other provision of this Lease (including, but not limited to, access to the Security Deposit required under Section 15 of this Lease) or under applicable law.

23.4 Right to Terminate Lease.

(a) Damages. Port may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Port's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Port other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Port shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease, taking into account any accrued Rent Credit;

(ii) The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided, taking into account any accrued Rent Credit;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided, taking into account any accrued Rent Credit;

(iv) Any other amount necessary to compensate Port for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result there from; and

(v) "The worth at the time of the award," as used in Section 23.4(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award," as used in Section 23.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate pursuant to Section 2.10.

(c) Waiver of Rights to Recover Possession. In the event Port terminates Tenant's right to possession of the Premises pursuant to this Section 23.3, and if such termination is contested by Tenant and Port successfully prevails, and in any appeal thereof, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Transfer or Sublet. Upon the occurrence of an Event of Default, notwithstanding Section 16, Tenant shall have no right to Sublease the Premises in whole or in part or to Transfer any interest in this Lease without Port's written consent, which may be given or withheld in Port's sole and absolute discretion.

23.5 Assignment Remedy. The Port may effectuate the Assignment and Assumption Agreement (the "**Assignment Remedy**") as set forth in this Section 23.5. Within thirty (30) days of an Event of Default but subject to the provisions of Section 38 of the Lease, the Port shall notify Tenant in writing of Port's election to exercise the Assignment Remedy (the "**Notice of Assignment Remedy**"). When an assignee acceptable to the Port in its sole and absolute discretion has been identified, Port shall (i) notify Tenant thereof in writing; (ii) execute the Port Release in favor of Tenant; and (iii) cause the full execution of the Assignment and Assumption Agreement and Port Release. Notwithstanding the foregoing, the Port shall have the sole and absolute right to terminate the Lease or elect any of the other remedies set forth in this Section 23 in the event an assignee acceptable to the Port in its sole and absolute discretion has not been identified within six (6) calendar months from the effective date of the Notice of Assignment Remedy, unless further extended in the Port's sole and absolute discretion.

23.6 Continuation of Subleases and Agreements. If this Lease is terminated prior to the expiration thereof, and subject to any non-disturbance agreements entered into by Port pursuant to the terms of this Agreement, Port shall have the right, at its sole option, to assume any and all agreements by Tenant for the maintenance or operation of the Premises, to the extent assignable by Tenant. Tenant hereby further covenants that, upon request of Port following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to Port such further instruments as may be necessary or desirable to

vest or confirm or ratify vesting in Port the then existing agreements then in force, as above specified, but only to the extent assignable by Tenant.

23.7 Limitation on Liability of Tenant. Notwithstanding anything to the contrary in this Lease, the liability of Tenant for its obligations under this Lease is limited solely to the assets of Tenant as the same may be encumbered from time to time, and no personal liability shall at any time be asserted or enforceable against any of Tenant's shareholders, partners, officers, members or managers or its or their respective partners, shareholders, members, directors, officers or managers or any Mortgagee of same on account of any of Tenant's obligations, actions or inactions under this Lease. In no event shall Tenant be liable for any punitive or consequential damages or damages for any loss of business of the Port or its Agents.

SECTION 24. EQUITABLE RELIEF

24.1 Port's Equitable Relief.

In addition to the other remedies provided in this Lease, Port shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Port shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

24.2 Tenant's Equitable Relief.

In addition to the other remedies provided in this Lease, Tenant shall be entitled at anytime after a default or threatened default by Port to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of a default by Port, Tenant shall be entitled to any other equitable relief which may be appropriate to the circumstances of such default.

SECTION 25. NO WAIVER

25.1 No Waiver by Port or Tenant. No failure by Port or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Port or Tenant with respect to any other then existing or subsequent breach.

25.2 No Accord or Satisfaction. No submission by Tenant or acceptance by Port of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Port's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Port had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or

satisfaction unless the same is approved as such in writing by Port. Port may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Port to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

SECTION 26. DEFAULT BY PORT; TENANT'S EXCLUSIVE REMEDIES

Port shall be deemed to be in default hereunder only if Port shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue after written notice from Tenant thereof for more than the applicable cure period provided therefor, or, (ii) if no cure period is so provided, for more than sixty (60) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such sixty (60)-day period, Port shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default within a reasonable time thereafter. Upon the occurrence of default by Port described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right only (a) to collect from Port the amount of its Losses, including, without limitation, all actual damages incurred by Tenant as a result of Port's default and in enforcing Tenant's rights hereunder, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, (b) to collect Attorneys Fees and Costs in connection with the foregoing, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, or (c) to seek equitable relief (including, without limitation, specific performance) in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Port or its Agents; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages (including, without limitation, any consequential, incidental, punitive, damages for any loss of business, or other damages proximately arising out of a default by Port hereunder) or Losses other than Tenant's actual damages as described in the foregoing clause (a); (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by Port hereunder, and (iii) Tenant shall have no remedy of self-help. Nothing in this Lease shall be construed to constitute a waiver by Tenant of any claims by Tenant against the Port, in its regulatory capacity, for monetary damages based on federal or state constitutional "takings" law.

SECTION 27. TENANT'S RECOURSE AGAINST PORT

27.1 No Recourse Beyond Value of Premises Except as Specified. Tenant agrees that except as otherwise specified in this Section 27.1, Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability.

27.2 No Recourse Against Specified Persons. No commissioner, officer or employee of Port or City will be personally liable to Tenant, or any successor in interest, for any default or unmatured default by Port, and Tenant agrees that it will have no recourse with respect to any obligation of Port under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

27.3 Limitation on Port's Liability Upon Transfer. In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

SECTION 28. RESERVED

SECTION 29. ESTOPPEL CERTIFICATES BY TENANT

Tenant shall execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser or mortgagee of Port's interest in the Premises), within fifteen (15) days after a request, a certificate stating to the best of Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Port. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by Port or any successor agency, any successor agency, and any prospective purchaser or mortgagee of the Port's interest in the Premises or any part thereof. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into every Sublease) to cause Subtenants under any Subleases to execute, acknowledge and deliver to Port, within twenty (20) business days after request, an estoppel certificate covering the matters described in

clauses (a), (b), (c) and (d) above with respect to such Subleases but Tenant shall not be in default hereunder for failure of such Subtenant to comply with such provisions provided that Tenant declares such Subtenant in default for failure to comply with such provisions and pursues its remedies against Subtenant to enforce such provisions.

SECTION 30. RESERVED

SECTION 31. APPROVALS BY PORT

31.1 Approvals by Port. The Port's Executive Director, or his or her designee, is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Port hereunder, if the Executive Director determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Port's best interests. The Port Executive Director's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Port of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Port, the Executive Director, or his or her designee, shall be authorized to execute such instrument on behalf of Port, except as otherwise provided by applicable law, including the City's Charter.

31.2 Fees for Review. Within thirty (30) days after Port's written request, Tenant shall pay Port, as Additional Rent, Port's reasonable out-of-pocket third party costs, including, without limitation, reasonable attorneys' fees and costs incurred in connection with the review, investigation, processing, documentation and/or approval of any Proposed Transfer, Significant Change, Sublease, Mortgage, estoppel certificate, Non-Disturbance Agreement, and Subsequent Construction. Tenant shall pay such reasonable costs regardless of whether or not Port consents to such proposal, except only in any instance where Port has withheld, delayed or conditioned its consent in violation of the terms of this Lease.

SECTION 32. NO MERGER OF TITLE

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

SECTION 33. QUIET ENJOYMENT

Subject to the Permitted Title Exceptions and Section 1.1(c) hereunder, the terms and conditions of this Lease and applicable Laws, Port agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance

or molestation of anyone claiming by, through or under Port. Notwithstanding the foregoing, Port shall have no liability to Tenant in the event any defect exists in the title of Port as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to Port's willful misconduct), and, except as otherwise expressly provided in this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

SECTION 34. SURRENDER OF PREMISES

34.1 Condition of Premises. Upon the expiration or other termination of the Term of this Lease as may be permitted or may occur pursuant to any other provision of this Lease, Tenant shall quit and surrender to Port the Premises, and all Improvements, repairs, alterations, additions, substitutions and replacements thereto, in good order and condition, but with reasonable wear and tear (consistent with Tenant's maintenance obligations under this Lease), casualty and Condemnation, if applicable, excepted. Tenant hereby agrees to execute all documents as Port may deem necessary to evidence or confirm any such other termination. Upon expiration or termination of this Lease, Tenant and all Subtenants and operators shall have the right to remove their respective Personal Property and trade fixtures, but any damage to the Improvements which is caused by their removal of same shall be repaired at Tenant's expense. At Port's request, Tenant shall remove, at no cost to Port, any Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by other Persons).

34.2 Termination of Subleases. Upon any termination of this Lease, Port shall have the right to terminate all Subleases hereunder except for those Subleases with respect to which Port has entered into Non-Disturbance Agreements as provided in Section 16.4, or which Port has agreed to assume pursuant to Section 16.3 or Section 23.5.

SECTION 35. HOLD OVER

Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of Port which may be given or withheld in its sole and absolute discretion. In any such event, at Port's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant at 150% of the Base Rent in effect at the expiration of the Term from the date of holdover.

SECTION 36. NOTICES

36.1 Notices. All notices, demands, consents, and requests which may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on

the date that is three days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Port: San Francisco Port
Pier 1
San Francisco, California 94111
Attention: Director of Real Estate
Facsimile: (415) 274-0469
Telephone: (415) 274-0400

To Tenant: Sudeep Rao, Executive Director
Literacy For Environmental Justice
800 Innes Avenue, Suite 11
San Francisco, California 94124
Facsimile: (415) 282-6839
Telephone: (415) 282-6840

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. Copies of notices may also be given by telefacsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Agreement; provided, however, items sent by telefacsimile by Developer to Port shall be considered only a courtesy copy and not be considered sent by Developer and received by Port unless and until sent in any of the other methods described above, but items sent by telefacsimile by Port to Developer shall be considered sent by Port and received by Developer upon generation of a confirmation report therefor by the sending party showing the date and time thereof.

Any Rent payments Tenant makes to the Port shall be sent to:

San Francisco Port
(Reference: LEJ)
Pier 1
San Francisco, CA 94111
Attention: Real Estate Department

36.2 **Form and Effect of Notice.** Every notice given to a Party or other Person under this Section must state (or shall be accompanied by a cover letter that states):

(a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 36.2.

SECTION 37. INSPECTION OF PREMISES BY PORT

37.1 Entry. Tenant shall permit Port and its Agents to enter the Premises during regular business hours upon at least twenty-four (24) hour prior written notice (and at any time without written notice in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Port may have a right to perform under Section 23, or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Port reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions; provided, however, Port agrees in performing or undertaking any of the foregoing activities to use reasonable efforts to minimize interference with the activities and tenancies of Tenant, Subtenants and their respective Invitees. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of the Premises. If Port elects to perform work on the Premises pursuant to Section 23.3, provided that Port complies with the foregoing provisions, Port shall not be liable to Tenant for any Losses including, without limitation, loss of business, inconvenience or other damages, by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof.

37.2 Exhibit for Transfer or Lease. Tenant shall permit Port and its Agents to enter the Premises during regular business hours upon twenty-four (24) hour prior written notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of Port's interest in the Premises, and (ii) during the last six (6) months of the Term or any extended Term, for the purpose of showing the Premises to prospective tenants.

37.3 Tenant Right to Accompany. Tenant shall have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises; provided, however, Port may inspect Public Access Areas whether or not accompanied by such a representative of Tenant.

37.4 Port's Entry Rights Against Subtenants. Tenant agrees to include in any Sublease provisions equivalent to the foregoing granting Port such rights of entry.

SECTION 38. NO MORTGAGES

Tenant shall not have the right to:

38.1 No Financing on Leasehold Interest. Engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or

38.2 No Encumbrances on Leasehold Interest. Place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances.

38.3 No Encumbrances on Fee Interest. Place any lien or encumbrance on Port's fee interest in the Land or its right to receive rent under this Lease.

38.4 Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien which is not permitted by this Section 38 shall be deemed to be a violation of this covenant on the date of its execution or filing of record or whether or when it is foreclosed or otherwise enforced.

SECTION 39. FIRST SOURCE HIRING ORDINANCE

Tenant shall comply with the First Source Hiring Ordinance attached hereto as Exhibit E with respect to the operation and leasing of the Premises and shall incorporate similar obligations into all Subleases to be applicable to Subtenants in accordance with the First Source Hiring Ordinance.

SECTION 40. SPECIAL PROVISIONS

40.1 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, height, weight, 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 in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, 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 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form HRC-12B-101) with supporting documentation and secure the approval of the form 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 Lease 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.

40.2 Mitigation Measures. Tenant agrees that the operation of the Premises shall be in accordance with the Mitigation Measures attached to this Lease as Exhibit F, which are to be performed on the part of the Tenant. As appropriate, Tenant shall incorporate such Mitigation Measures into any contract for the operation of the Improvements.

40.3 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

40.4 Tropical Hardwood Ban/Virgin Redwood. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product. Except as permitted by the application of Sections 12I.3.b and

12I.4.b of the San Francisco Administrative Code, Tenant shall not use any tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood product in the construction of the Initial Improvements or any other Improvements on the Premises.

40.5 Tobacco Product Advertising Prohibition. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Premises. The foregoing prohibition shall include 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 or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking

40.6 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, including the remedies provided, and implementing regulations, as the same may be amended 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. The text of the HCAO is available on the web at www.ci.sf.ca.us/HCAO. 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 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within 30 days after receiving City's 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 period of 30 days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Tenant shall require the Subcontractor 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 City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails

to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO. Tenant shall keep itself informed of the current requirements of the HCAO. Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(g) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than \$75,000 in the fiscal year.

40.7 Employee Signature Authorization Ordinance. The City has adopted an Employee Signature Authorization Ordinance (S.F. Env. Code Chapter 7). That ordinance requires employers of employees in hotel or restaurant projects on public property with more than 50 employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant shall comply with the requirements of such ordinance including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators.

40.8 Green Building Ordinance. The City has adopted a Resource-Efficient City Buildings Ordinance (S.F. Env. Code Chapter 7). 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.

40.9 Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "**Conduct Code**") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving (a) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (b) any employment for compensation; or (c) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (d) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (e) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (f) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Tenant understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Tenant except as provided under the Conduct Code. Tenant agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Tenant agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Tenant with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Tenant of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

SECTION 41. GENERAL

41.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend; Holiday; Business Day. A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. on the next business day. For purposes of this Lease, a business day means any day except Saturday, Sunday, or a day on which the City and County of San Francisco is closed for business.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder.

41.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be Deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, Section or paragraph of this Lease or any specific subdivision thereof.

41.3 Successors and Assigns. This Lease is binding upon and will inure to the benefit of the successors and assigns of Port, Tenant and any Mortgagee. Where the term "Tenant" or "Port" is used in this Lease, it means and includes their respective successors and assigns, including, as to any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or a comparable public body which has succeeded to Port's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Port for purposes of this Lease.

41.4 No Third Party Beneficiaries. This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person.

41.5 Real Estate Commissions. Port is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and Port each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to indemnify the other Party from any Losses arising out of such claim.

41.6 Counterparts. This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

41.7 Entire Agreement. This Lease (including the Exhibits), for so long as such agreement is in effect, constitute the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior draft of the Lease or of any other agreement shall be permitted to contradict or vary the terms of this Lease.

41.8 Amendment. Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

41.9 Governing Law; Selection of Forum. This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Port's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of Port, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

41.10 Recordation. This Lease will not be recorded by either Party.

41.11 Extensions by Port. Upon the request of Tenant, Port may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate,

including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

41.12 Further Assurances. The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease. The Executive Director of the Port (subject to approval as to form by the City Attorney) of the Port is authorized to execute on behalf of the Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with Tenant, State, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the purposes and objectives of this Lease, if the Executive Director (in consultation with the City Attorney) determines that the document or agreement is necessary or proper and is in the Port's best interests.

41.13 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. The "prevailing party" shall be determined based upon an assessment of which party's major arguments or positions taken in the action or proceeding could fairly be said to have prevailed (whether by compromise, settlement, abandonment by the other party of its claim or defense, final decision, after any appeals, or otherwise) over the other party's major arguments or positions on major disputed issues. Any Fees incurred in enforcing a judgment shall be recoverable separately from any other amount included in the judgment and shall survive and not be merged in the judgment. The Fees shall be deemed an "actual pecuniary loss" within the meaning of Bankruptcy Code Section 365(b)(1)(B), and notwithstanding the foregoing, all Fees incurred by either party in any bankruptcy case filed by or against the other party, from and after the order for relief until this Lease is rejected or assumed in such bankruptcy case, will be "obligations of the debtor" as that phrase is used in Bankruptcy Code Section 365(d)(3).

41.14 Severability. If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease, in which case, the Parties will negotiate in good faith a replacement provision which is not invalid to accomplish substantially the same intention as the provision held invalid.

SECTION 42. DEFINITION OF CERTAIN TERMS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

Affiliate means any Person directly or indirectly Controlling, Controlled by or under Common Control with the other Person in question.

Agents means, when used with reference to either Party to this Lease or any other Person or party so designated, the members, officers, directors, commissioners, employees, agents, contractors and vendors of such Party or other Person, and their respective heirs, legal representatives, successors and assigns.

Assignment and Assumption Agreement is attached hereto as Exhibit G.

Assignment Remedy is defined in Section 23.5.

Attorneys' Fees and Costs means reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

Base Index is defined in Section 2.3(d).

Base Rent is defined in Section 2.3.

BCDC means the Bay Conservation and Development Commission, a State agency established under the McAteer Petris Act.

Books and Records is defined in Section 2.5.

Burton Act means the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, providing for the transfer to City from State, subject to specified terms, conditions and reservations, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

Burton Act Agreement means that certain Agreement Relating to Transfer of Port of San Francisco from the State of California to the City and County of San Francisco, dated January 24, 1969, entered into between City and State under the authority granted under the Burton Act.

Burton Act Trust means that statutory trust imposed by the Burton Act.

Business Day is defined in Section 41.1(b).

Casualty Notice is defined in Section 12.4(a).

Certificate of Completion is defined in Section 5.1 of the Work Letter, and as described below in the definition of "Completion."

City means the City and County of San Francisco, a municipal corporation, and all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Port, and the members and employees of the foregoing. City shall refer to the City operating by and through its Port Commission, where appropriate. All references to the City shall include the Port.

Commencement Date is defined in Section 1.2(a).

Common Control means that two Persons are both Controlled by the same other Person.

Completion means completion of construction of all or any applicable portion of the Improvements in accordance with the terms of the Work Letter, except for any Deferred Items. The fact of Completion shall be conclusively evidenced by the issuance of a Certificate of Completion pursuant to the Work Letter, except for any Deferred Items. "Complete" shall have a correlative meaning.

Completion Date means the date of the issuance of the Certificate of Completion.

Condemnation means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, the right of access and ingress thereto, the right of egress there from, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

Condemnation Date means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

Conservancy means the California State Coastal Conservancy.

Construction Documents is defined in Section 10.3.

Control or **Controlled** means the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the vote and value of another Person or the power to exercise the operating control, management and operation of another Person, whether by contract, operation of law or otherwise.

Current Index is defined in Section 2.3(d).

Default Rate is defined in Section 2.10.

Deferred Items is defined in the Work Letter.

Disabled Access Laws means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 et seq. and disabled access laws under the Port's building code.

Estimator is defined in Section 12.9(b).

Event of Default is defined in Section 22.1.

Executive Director means the Executive Director of the Port or his or her designee.

Final Construction Documents as to the Initial Improvements shall have the meaning given in the Work Letter and as to Subsequent Construction shall mean plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

Force Majeure means events which result in delays in a Party's performance of its obligations hereunder primarily due to causes beyond such Party's control, including, but not restricted to, acts of nature or of the public enemy, acts of the government, acts of the other Party, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, and unusually severe weather; delays of contractors or subcontractors due to any of these causes; the unanticipated presence of Hazardous Materials or other concealed conditions on the Premises that would substantially delay or materially and adversely impair the Tenant's ability to construct any alteration or Subsequent Construction on the Premises; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Premises; archeological finds on the Premises; strikes, and substantial interruption of work because of labor disputes; inability to obtain materials or acceptable (to Tenant in its reasonable discretion) substitute materials (provided that the Tenant has ordered such materials on a timely basis and the Tenant

is not otherwise at fault for such inability to obtain materials). Force Majeure does not include failure to obtain financing or have adequate funds (unless such lack results from some other event of Force Majeure such as failure of a bank's accounting or computers which is caused by Force Majeure) nor will Force Majeure be permitted to delay any Remediation of Hazardous Materials required of Tenant under the Lease.

Gross Building Area means the total floor areas of the buildings on the Premises, excluding unenclosed areas, measured from the exterior of the walls.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material ("Handling" will have a correlative meaning).

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or under Section 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids, and lead containing materials.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Materials Laws, together with any and all Losses made or threatened by any third party against City, including the Port, or their Agents or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in the value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws

include, but are not limited to, the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), to the extent applicable to tenants of City property on the effective date of the Lease, and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

Impositions is defined in Section 4.1(b).

Improvements means all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or under the Premises on or after the Commencement Date, including, but not limited to, the Initial Improvements, Subsequent Construction, and any Public Access Improvements located on the Premises, but at all times excluding any Public Access Improvements not located on the Premises.

Indemnified Parties means City, including, but not limited to, all of its boards, commissions, departments, agencies, employees and member and other subdivisions, including, without limitation, the Port, all of the Agents of the City including the Port, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect, defend and hold harmless.

Index means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Rent Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is modified during the Term or any extension hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, Port shall select another similar published index, generally reflective of increases in the cost of living.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the Index from the first day of the month in which the Commencement Date occurred to the first day of the most recent month for which the index is available at any given time.

Initial Improvements means all Improvements to be built on the Premises or portion(s) thereof under the Work Letter, as specifically defined in the narrative portion of the Scope of Development attached to the Work Letter as Attachment 2.

Investigate or **Investigation** when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

Late Charge is defined in Section 2.11.

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, or to the Parties' use of the Premises, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including, without limitation, the Redevelopment Plan and all Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

Lease means this Lease, as it may be amended from time to time.

Lease Year means a period of twelve (12) consecutive calendar months commencing on the first day of a Rent Period and ending on the last day of such Rent Period.

Leasehold estate means Tenant's leasehold estate created by this Lease.

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, costs, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorneys' Fees and Costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Major Damage or Destruction means damage to or destruction of all or any portion of the Initial Improvements (together with any Subsequent Improvements) on the Premises to the extent that the hard costs of Restoration will exceed fifty percent (50%) of the hard costs to replace such Improvements on the Premises in their entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

Minor Alterations is defined in Section 10.2.

Mitigation Measures means all of the measures relating to the Initial Improvements described in Exhibit F.

Official Records means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the City and County of San Francisco, and/or with respect to the filing of financing statements, the Official Records of the California Secretary of State, or the Official Records of any other government agency wherein security interests are registered and perfected as permitted under Laws.

Partial Condemnation is defined in Section 13.3.

Party means Port or Tenant, as a party to this Lease; **Parties** means both Port and Tenant, as Parties to this Lease.

Permitted Title Exceptions is defined in the Work Letter.

Permitted Uses is defined in Section 3.1.

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

Personal Property means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

Port means the City and County of San Francisco, acting by and through the San Francisco Port Commission, and the members and employees of the foregoing.

Port Release is attached hereto as Exhibit I.

Port Representative is defined in Section 2.6.

Preliminary Construction Documents as to the Initial Improvements shall have the meaning given in the Work Letter and as to Subsequent Construction shall mean plans and specifications in sufficient detail to show that the Subsequent Construction shall comply with applicable Law and generally including premises plans, building plans and elevations, floor plans, preliminary interior plans, and outline specifications for materials and finishes (each to the extent applicable).

Premises is defined in Section 1.1(a).

Program in Diversity is defined in Section 39.1.

Prohibited Activities is defined in Section 3.3.

Proposed Transfer is defined in Section 16.1(f).

Public Access Areas means any future areas that is designated as "Public Access Areas" in the Lease as required under the BCDC Permit attached hereto as Exhibit C. Unless otherwise specified in a recorded instrument executed by Port, the designation of any portion of the Premises as a Public Access Areas shall expire and cease to have any effect upon the expiration or earlier termination of this Lease. In addition, unless otherwise specified in a recorded instrument executed by Port and Tenant, the designation of a portion of the Premises as a Public Access Area shall expire if the Regulatory Approval, in connection with which such designation was recorded, expires or otherwise terminates.

Public Access Improvements means any improvements located in the Public Access Areas, whether or not located on the Premises, and whether or not constructed or installed by Tenant or another party.

Public Trust means the tidelands public trust for commerce, navigation and fisheries, including, without limitation, the statutory trust imposed by the Burton Act set forth in the Burton Act.

Regulatory Approval means any authorization, approval or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, BCDC, RWQCB, Port, Agency, and the Army Corps of Engineers, California Coastal conservancy.

Related Party means any Person in which Tenant or Affiliate has any financial interest other than that of Sublandlord to Subtenant.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease or the DA by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Rent means Base Rent and Additional Rent, collectively.

Rent Adjustment Date is defined in Section 2.3(d).

Restoration means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable (including code upgrades) to substantially the same condition they were in immediately before an event of damage or destruction, or in the case of Condemnation, the restoration, replacement, or rebuilding of the Improvements to an architectural whole. Notwithstanding the foregoing, the Port may, in its sole and absolute discretion, in connection with any Restoration, allow the Improvements and the other Improvements to be redesigned, reconfigured, or otherwise modified, provided that the Improvements as so redesigned complies with applicable requirements of the Public Trust, are of first-class quality affording similar public benefit as the original Improvements and are subject to the terms of this Lease including, without limitation: (1) Section 3.1(a) related to Permitted Uses; and (2) the provisions of Section 10 relating to Subsequent Construction, and provided that the design of the modified Improvements be subject to approval in the same manner as the Initial Improvements or Subsequent Construction, as the case may be, were approved under Article 6. All Restoration shall be conducted in accordance with the provisions of Section 10. ("Restore" and "Restored" shall have correlative meanings.)

RWQCB shall mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

Sale is defined in Section 16.1(h).

Schematic Drawings as to the Initial Improvements shall have the meaning given in the Work Letter and as to Subsequent Improvements shall mean conceptual drawings in sufficient detail to describe a development proposal.

Scope of Development is defined in the Work Letter.

Security Deposit is defined in Section 15.

Significant Change means any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Tenant, directly or indirectly, in one or more transactions, that results in a change in the identity of Persons Controlling Tenant, provided a change in the mere form or identity or entity or manner in such Persons Controlling Tenant shall not constitute a Significant Change so long as the ultimate beneficial ownership in Tenant of the Persons Controlling Tenant does not change. The sale of fifty percent (50%) or more of Tenant's assets, capital or profits, or assets, capital or profit of any Person Controlling Tenant, except to an Affiliate, shall also be a Significant Change.

State is defined in Section 1.1(d).

Sublandlord is the Tenant when Tenant enters into a Sublease.

Sublease means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

Subleased Premises means that portion of the Premises, whether improved or unimproved or whether subject to exclusive possession or common use, demised for the use, occupation and/or possession by a Subtenant.

Subsequent Construction means all repairs to and reconstruction, replacement, addition, expansion, Restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Initial Improvements pursuant to the Work Letter.

Substantial Condemnation is defined in Section 13.3(a).

Tenant means Literacy For Environmental Justice, a California nonprofit corporation, and its permitted successors and assigns.

Tenant's Personal Property is defined in Section 38.2(e).

Term is defined in Section 1.2(b).

Total Condemnation is described in Section 13.2.

Transfer is defined in Section 16.1.

Uninsured Casualty is defined in Section 12.4(a).

Work is defined in Section 10.8.

Work Letter shall mean the document attached hereto and fully incorporated herein by reference as Exhibit G.

REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT: LITERACY FOR ENVIRONMENTAL JUSTICE,
a California non-profit corporation

By: _____
Title _____

By: _____
Title _____

Dated: _____

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

By: _____
Monique Moyer, Executive Director

Dated: _____

APPROVED AS TO FORM:

DENNIS HERRERA, City Attorney

By: _____
Deputy City Attorney

Dated: _____

Port Commission Resolution No. 05-64
Board of Supervisors Resolution No. _____

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT: LITERACY FOR ENVIRONMENTAL JUSTICE,
a California non-profit corporation

By: [Signature]
Title EXEC. DIRECTOR

By: [Signature]
Title Partner

Dated: 11/9/05

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

By: _____
Monique Moyer, Executive Director

Dated: _____

APPROVED AS TO FORM:
DENNIS HERRERA, City Attorney

By: _____
Deputy City Attorney

Dated: _____

Port Commission Resolution No. 05-64
Board of Supervisors Resolution No. _____

EXHIBIT A

LEGAL DESCRIPTION

All that land of the Port Commission of the City and County of San Francisco, California, described as: a portion of Heron's Head Park, formerly known as Pier 98, more particularly described as follows:

Commencing at the intersection of the southeasterly line of Jennings Street (80 feet wide) with the northeasterly line of Burke Avenue (80 feet wide);

Thence along said southeasterly line of Jennings Street, N 36° 41' 20" E, a distance of 200.00 feet to a point of intersection with the southeasterly prolongation of the southwesterly line of Cargo Way (150 feet wide);

Thence 70° 29' 14" E, a distance of 438.88 feet, to the True Point of Beginning;

Thence S 66° 41' 24" E, a distance of 61.50 feet;

Thence N 23° 18' 36" E, a distance of 33.00 feet;

Thence N 66° 41' 24" W, a distance of 44.00 feet;

Thence N 23° 18' 36" E, a distance of 15.00 feet;

Thence N 66° 41' 24" W, a distance of 17.50 feet;

Thence S 23° 18' 36" W, a distance of 48.00 feet, to the True Point of Beginning;

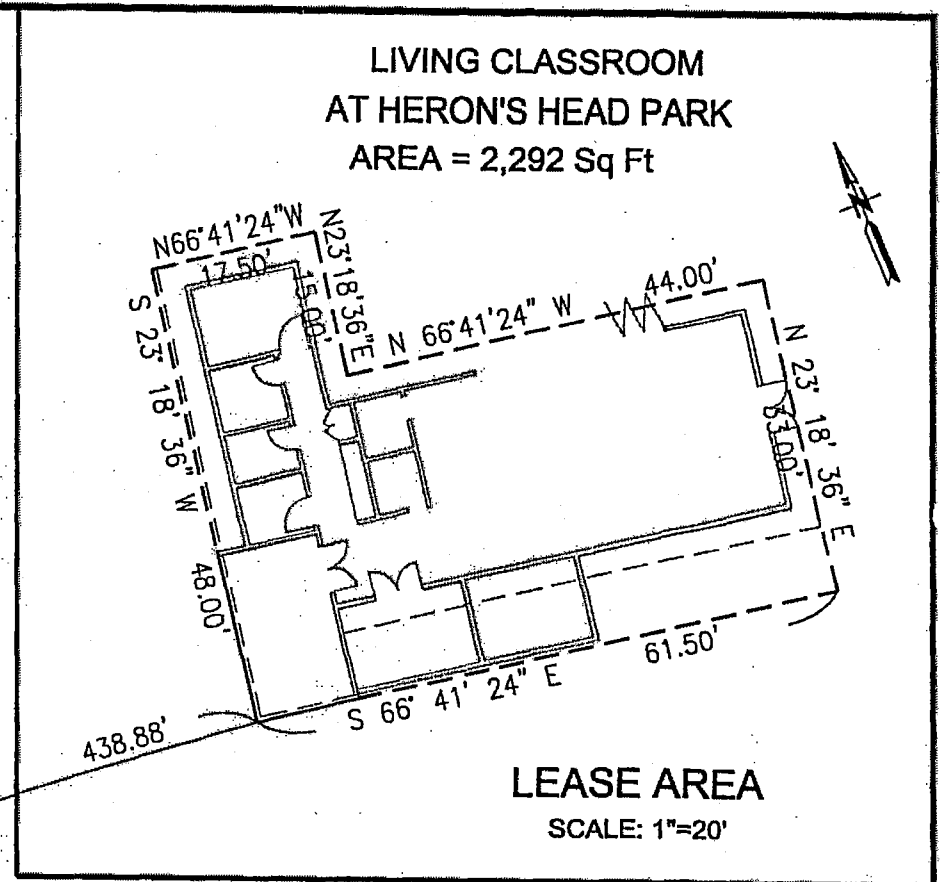
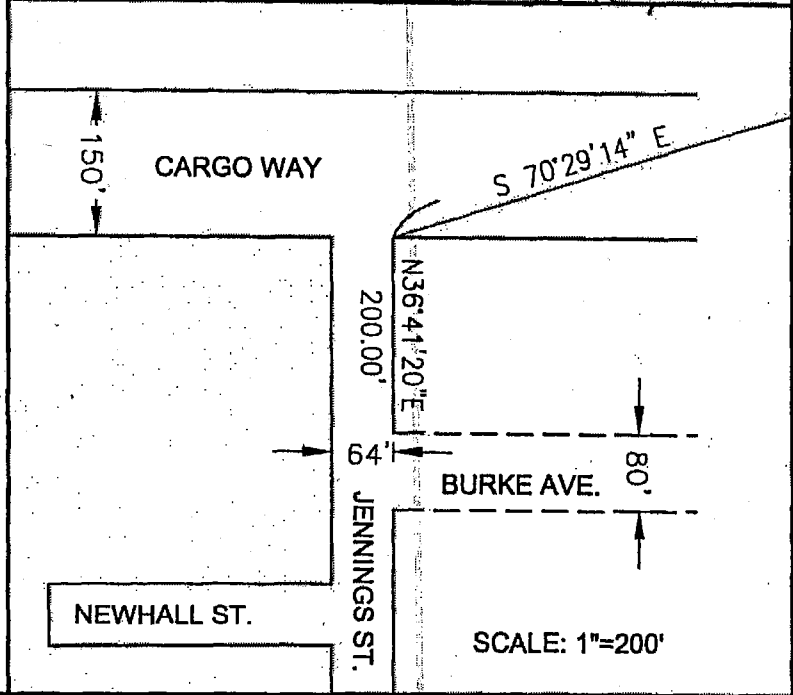
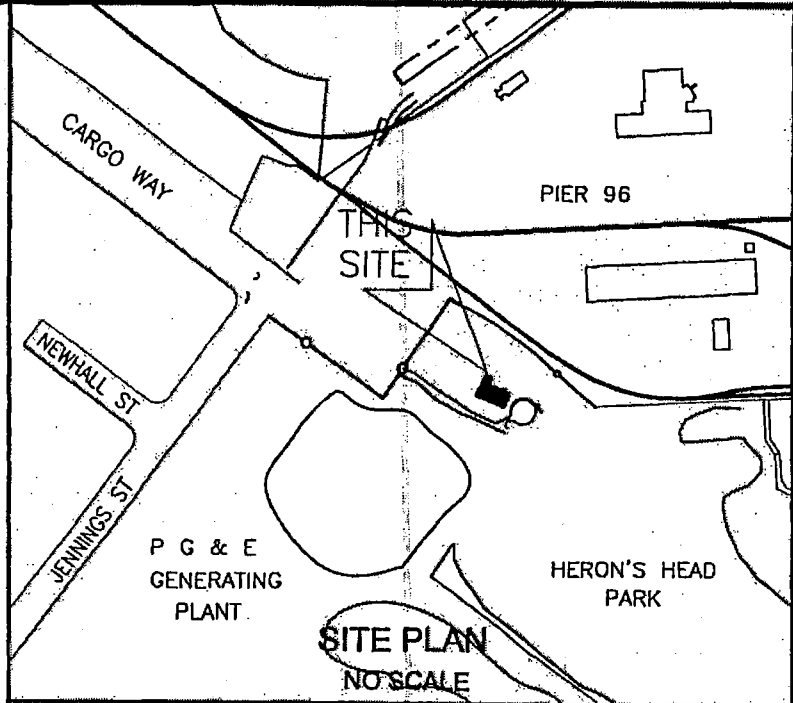
Containing 2,292 square feet.

INITIALS: PORT:

TENANT

DATE:

EXHIBIT B



LEASE NO.

L-13816



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

LITERACY FOR
ENVIRONMENTAL JUSTICE

DRAWN BY: ECC, AMN	DATE: JULY 07, 2005
CHECKED BY: M. LOZOVY	SCALE: AS SHOWN
PLACE CODE NO.	1980-00
SHEET NO. 1	

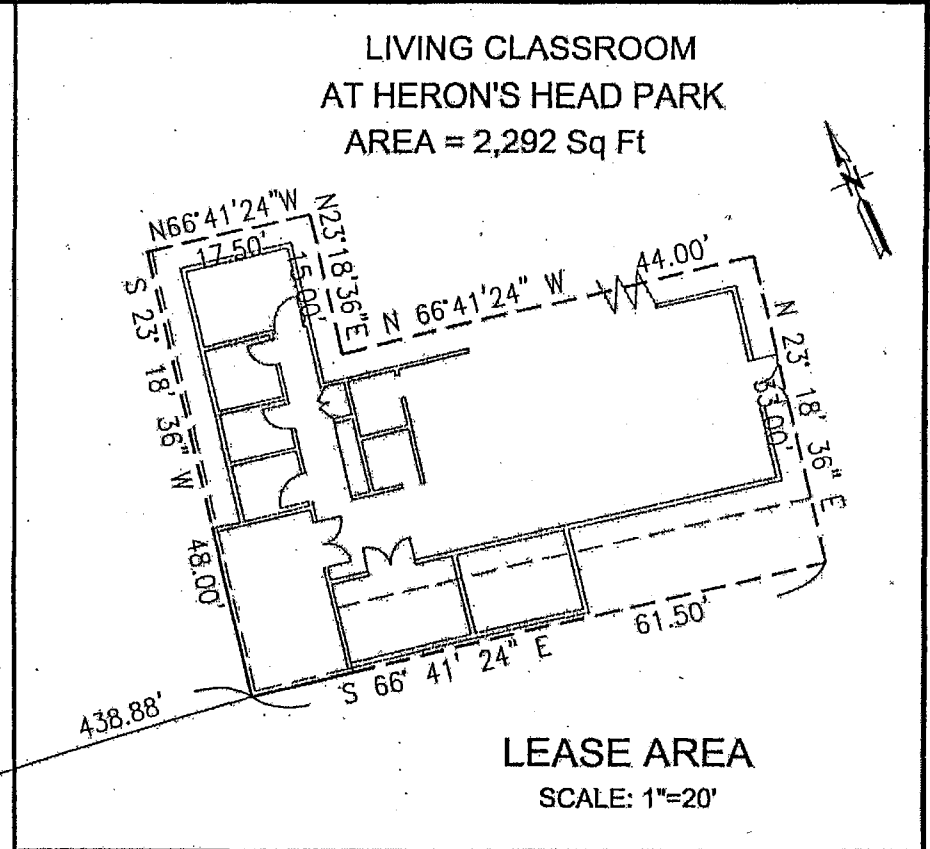
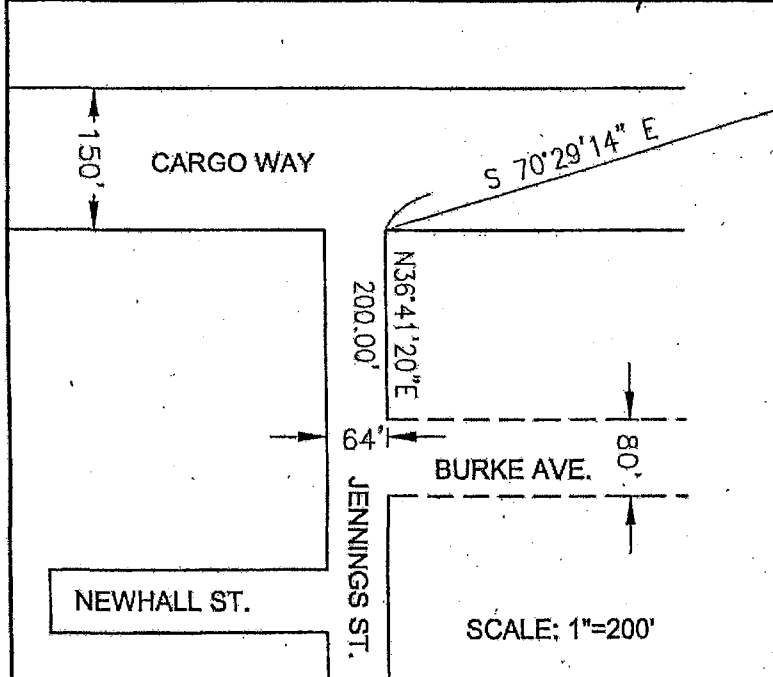
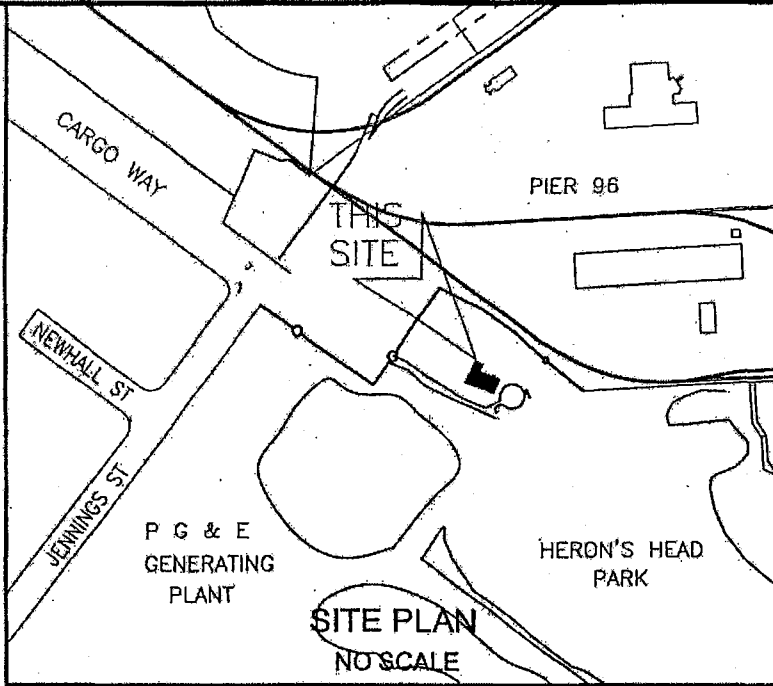
INITIALS: _____

T: _____

TENANT: _____

DATE: _____

EXHIBIT B



11611

LEASE NO.

L-13816



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

LITERACY FOR
ENVIRONMENTAL JUSTICE

DRAWN BY: ECC, AMN

DATE: JULY 07, 2005

CHECKED BY: M. LOZOVY

SCALE: AS SHOWN

PLACE CODE NO.

1980-00

SHEET NO. 1

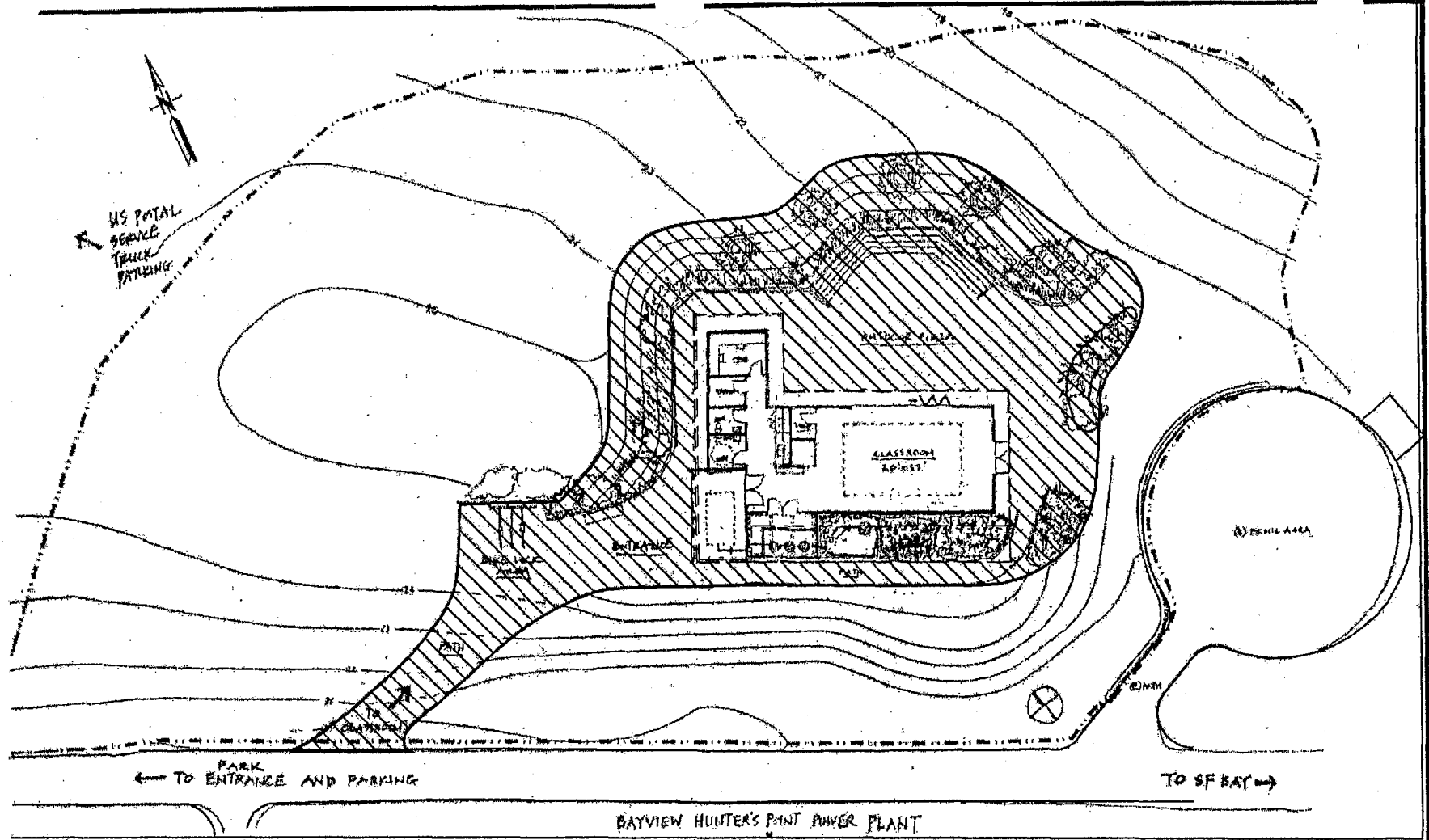
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INITIALS: P 7

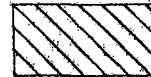
TENANT:

DATE:

EXHIBIT B-1



SCALE: 1"=30'



NON-EXCLUSIVE LICENSE
 AREA ≈ 6,058 SQ. FT.
 (NOT INCLUDING FLOOR PLAN AREA)

LEASE NO.

L-13816



SAN FRANCISCO PORT COMMISSION
 PORT OF SAN FRANCISCO
 DEPARTMENT OF ENGINEERING

TENANT

LITERACY FOR
 ENVIRONMENTAL JUSTICE

DRAWN BY: ECC, AMN

DATE: JULY 07, 2005

CHECKED BY: M. LOZOVY

SCALE: AS SHOWN

PLACE CODE NO.

1980-00

SHEET NO. 2

OF 2 SHEETS

1162

EXHIBIT D

CAPITAL IMPROVEMENTS

Pursuant to Section 8.1(a), the Capital Improvements to be performed by Port and funded by the Tenant through the Capital Improvement Fee are expressly stated below. Under no circumstances shall the Port have the responsibility of repairing or maintaining portions of the Premises not expressly provided below, regardless of the cause or nature of such work.

1. All roof and roof membrane repairs and replacements.
2. Plumbing maintenance and repair that involves replacement or repair of pumps valves, or piping, including replacement of the pump in below-grade sump for the "Living Machine"
3. All interior and exterior electrical wiring, including, without limitation, replacement of inverter for solar power as needed, but excluding replacement of any exterior or interior light bulbs and fixtures.
4. HVAC repair and replacement, including, without limitation, pumps and piping associated with the radiant heat system and on-demand water heater.
5. Repaint entire interior twice during the Lease Term, as reasonably determined by the Port.
6. Repaint and seal metal security ornamental grates on window and exterior doors.
7. Inspect and maintain fire suppression system every 5 years.
8. Repair and replace leaking windows, hardware on doors, doors and security grates, to extent caused by settlement and/or natural disasters. Tenant is responsible for any of the same caused by vandalism or negligence on part of Tenant or any third party.
9. Repair and maintenance of the decomposed granite footpath within the License Area.

O:\bmp\LE\Final Lease Docs\Exhibit D (Capital Imprv).doc

EXHIBIT D-1

**PROCEDURES FOR APPLYING
CAPITAL IMPROVEMENTS FEE**

1. Tenant will notify the Port in writing as soon as possible after noticing the need for maintenance work that constitutes a Capital Improvement under the terms of the Lease ("Tenant's Notice").
2. Port will commence performance of necessary maintenance as soon as practicably possible, and in any event within 30 days of receipt of Tenant's Notice, unless it is reasonably determined by Tenant that waiting to make the repair will result in additional damage or increased maintenance costs, or cause the cessation of operations of the Living Classroom, in which case Port shall commence performance immediately. Port shall diligently pursue and complete all Capital Improvements in a timely fashion.
3. Port shall provide Tenant with written notice of the anticipated timing of maintenance work at least two (2) working days prior to commencement of any maintenance being performed by the Port.
4. After performance of each maintenance item paid for through the Capital Improvement Fee, the Tenant will receive a statement of the remaining balance of the Capital Improvements Fee.

O:\bmp\LE\Final Lease Docs\Exhibit D1(Cap Impr Procedures).doc

EXHIBIT E

FIRST SOURCE HIRING AGREEMENT

Between Literacy for Environmental Justice and Port of San Francisco

RECITALS

A. This First Source Hiring Agreement ("Agreement"), is made and entered as of this _____ day of _____, 200_, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), and LITERACY FOR ENVIRONMENTAL JUSTICE, a California non-profit corporation ("Tenant"). This Agreement shall be administered by and through the City's First Source Hiring Administration ("FSHA").

B. The Port and Tenant, entered into the Lease dated as of September 27, 2005 ("Lease"), under which Tenant has the right to construct, maintain and operate a Living Classroom and related improvements on the real property located at Heron's Head Park and more fully described in the Lease ("Premises").

C. This Agreement is made pursuant to the First Source Hiring Program ("Program") set forth in Chapter 83 of the San Francisco Administrative Code. Tenant is subject to the Program as a "Contractor" entering into a Property Contract with Port, as a "Developer" obtaining a Permit, and as an "Employer," as those terms are defined under Section 83.4 of the San Francisco Administrative Code.

AGREEMENT

1. **Definitions.** For purposes of this Agreement, initially capitalized terms shall be defined as follows:

Economically Disadvantaged Individual: shall mean an individual who is either (a) eligible for services under the Job Training Partnership Act, 29 U.S.C. section 1503, as determined by the San Francisco Private Industry Council; or (b) designated as "economically disadvantaged" by FSHA as an individual who is at risk of relying upon, or returning to, public assistance.

Entry Level Position: shall mean a non-managerial position that requires either (1) no education above a high school diploma or certified equivalency; or (2) less than two years training or specific preparation. It shall include temporary and permanent jobs and construction jobs related to the Development Project.

First Opportunity: shall mean consideration by an Employer of the System referrals for filling Entry Level Positions prior to recruitment and hiring of non-System job applicants.

FSHA: First Source Hiring Administration, the body designated to administer and monitor the San Francisco Workforce Development System as set forth in section 83.6 of the San Francisco Administrative Code. **The FSHA Jobs Hotline number is (415) 749-7500 (CalJOBS).**

Good Faith Efforts: shall mean engaged in reasonable employment opportunity outreach including the development of recruitment, interview, hiring and Retention plans in collaboration with the System.

Interviewing Requirement: shall mean notification to the System of available Entry Level Positions, receipt of System referrals and fair consideration of System referrals for a specified period of time prior to recruitment and hiring of non-System job applicants.

Job Classification: shall mean categorization of employment opportunities or positions by craft, occupational title, skills and experience required, if any.

Permit: as of the date hereof, shall mean any building permit application for more than 50,000 square feet of Commercial Activity at the Premises which involves new construction, an addition, or alteration and which results in the expansion of entry level positions for the Commercial Activity. For Phase II of the Program (which will go into effect as of April 2001), "Permit" shall also include the definition thereof set forth in Section 83.4(m) of the San Francisco Administrative Code.

Program: shall mean the First Source Hiring Program set forth in Chapter 83 of the San Francisco Administrative Code.

Property Contract: shall mean the Lease between Port and Tenant for the use of the Living Classroom and related improvements at Heron's Head Park to be used for the operation of educational facility that creates available Entry Level Positions.

Publicize: shall mean to advertise or post or to participate in job fairs or other forums in which employment information is available.

Qualified: shall mean an Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications designated and submitted to the System by an Employer.

Retention: shall apply to the Entry Level Positions, not to any particular individual.

System: shall mean the San Francisco Workforce Development System established by the City and managed by FSHA for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective Employers covered by the Program.

Subcontractor: shall mean any person(s), firm, partnership, corporation, or combination thereof, that has a direct contract with Tenant to perform construction work on the Initial Improvements as such term is defined under the Lease.

Subtenant: shall mean any person(s), firm, partnership, corporation, or combination thereof (except City or Port), that has a direct contract with Tenant to sublease, occupy, franchise or license any portion of the leased premises for a period exceeding 29 days.

2. **Good Faith Efforts by Tenant.** Tenant, in its capacity as a Contractor entering into a Property Contract with Port, agrees to make Good Faith Efforts to fill Entry Level Positions to the extent any are located at the Premises, in San Francisco, California, through referrals from the System or a System-approved employment services provider, subject to any enforceable collective bargaining agreements, consent decrees, existing employment contracts, applicable law and other limitations set forth in this Agreement.

3. **Good Faith Efforts by Subcontractors.** Tenant, in its capacity as a Developer applying for a Permit, agrees that in all contracts that it enters into with any Subcontractors, it shall require said Subcontractors to make Good Faith Efforts to fill their Entry Level Positions for construction jobs at the Premises through referrals from the System or a System-approved employment services provider (subject to any enforceable collective bargaining agreements, consent decrees, existing employment contracts, applicable law and other limitations set forth in this Agreement), and shall incorporate the requirements set forth in this Agreement in all relevant contracts it enters into with Subcontractors from and after the date of this Agreement. If the Tenant fulfills its obligations under this Agreement, but a Subcontractor fails to comply with the requirements of this Agreement or the Program, the City shall then have the remedies available to it under Section 13 against such Subcontractor but in no event shall Tenant be held responsible for the failure of a Subcontractor to comply with the requirements of this Agreement or the Program nor have any further enforcement obligations against such Subcontractor and a failure by a Subcontractor to so comply shall not constitute a default by Tenant under the Lease.

4. **Good Faith Efforts by Subtenants.** Tenant, in its capacity as a Contractor entering into a Property Contract with Port, further agrees that in all contracts that it enters into with any Subtenants, Tenant shall require said Subtenants to make Good Faith Efforts to fill their Entry Level Positions at the Premises through referrals from the System or a System-approved employment services provider (subject to any enforceable collective bargaining agreements, consent decrees, existing employment contracts or applicable law), and shall incorporate the requirements set forth in this Agreement in all relevant contracts it enters into with Subtenants from and after the date of this Agreement. If the Tenant fulfills its obligations under this Agreement, but a Subtenant fails to comply with the requirements of this Agreement or the Program, the City shall then have the remedies available to it under Section 13 against such Subtenant but in no event shall Tenant be held responsible for the failure of a Subtenant to comply with the requirements of this Agreement or the Program nor have any further enforcement obligations against such Subtenant and a failure by a Subtenant to so comply shall not constitute a default by Tenant under the Lease.

5. **First Opportunity.** Except to the extent that Tenant intends to fill an Entry Level Position at the Premises from a pool of internal candidates, Tenant agrees to offer, and to require its Subcontractors and Subtenants to offer, to the System the First Opportunity to provide Qualified Economically Disadvantaged Individuals for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements, consent decrees, existing employment contracts or applicable law. Employers shall consider all applications of Qualified Economically Disadvantaged Individuals referred by the System for employment. So long as Employers utilize nondiscriminatory screening criteria, Employers shall have the sole discretion to interview, hire or reject individuals referred to them by the System.

6. **Interviewing Requirement.** The duration of the Interviewing Requirement shall be for the five (5) days immediately after Tenant notifies the System of the job availability (provided, however, that this requirement shall not apply to the extent that Tenant intends to fill an Entry Level Position from a pool of internal candidates). During this period, Employers may Publicize the availability of Entry Level Positions only through the System. The System referral telephone number is (415) 749-7500.

7. **Information to be Provided by Tenant and Subtenants.** Within thirty (30) days after Tenant takes physical occupancy of the premises under the Lease, Tenant shall complete and submit to the System the "Employer's Projection of Entry Level Positions" Form. Whenever an Entry Level Position with Tenant becomes available during the term of the Lease, Tenant shall notify the System as soon as reasonably practicable and provide the information requested by FSHA. Tenant further agrees to include language in its Subleases entered into on or after the date of this Agreement, requiring its Subtenants to complete and submit to the System the "Employer's Projection of Entry Level Positions" Form within thirty (30) days after any Subtenant takes physical occupancy of the Premises under a sublease, and requiring its Subtenants to notify the System as soon as reasonably practicable and provide the information requested by FSHA whenever an Entry Level Position becomes available in a Subtenant's company at the Premises during the term of the sublease.

8. **Information to be Provided by Subcontractors.** Tenant agrees to include language in its Subcontracts entered into on or after the date of this Agreement, requiring its Subcontractors, prior to commencing construction work at the Development Project, to complete and submit to the System the "Employer's Projection of Entry Level Positions" Form, and requiring its Subcontractors to notify the System promptly, and provide the information requested by FSHA, whenever an Entry Level Position construction job becomes available during the period of construction.

9. **Record-Keeping.** Tenant shall maintain accurate records, and shall include language in its Subcontracts and Subleases requiring its Subcontractors and Subtenants to maintain accurate records, demonstrating compliance with the Program, including tracking information on FSHA-approved forms, if requested. Tenant's records shall include, without limitation, records for each available Entry Level Position at the Premises (with Tenant) of the number of applicants referred, number of applicants interviewed, number of job offers made, number of applicants hired, and number of applicants rejected. If a significant number of

positions are to be filled during a given period, or other circumstances warrant, FSHA may require daily, weekly or monthly reports containing all or some of the above information.

10. **Obligations of FSHA.** Tenant acknowledges that pursuant to the Program, the FSHA shall:

- a. Develop standardized forms for reporting, notification and tracking of employment needs and Entry Level Positions, and provide the same to Employers.
- b. Receive job notifications and job orders, and immediately initiate recruitment and pre-screening activities.
- c. Recruit Qualified Economically Disadvantaged Individuals to create a pool of applicants for jobs that match Employers' job specifications, and, to the extent appropriate, train applicants for jobs that will become available through the Program.
- d. Screen and refer applicants according to qualifications and specific selection criteria submitted by Employers.
- e. Provide funding for City-sponsored pre-employment and employment training, and for support services programs.
- f. Follow-up with Employers on results of applicant interviews and initiate corrective action as necessary to maintain an effective employment/training delivery system.
- g. Monitor compliance under this Agreement by examining the reporting, notification and tracking forms completed and submitted by Employers.

11. **Essential Functions.** Nothing in this Agreement precludes an Employer from using temporary employees to the extent that Tenant or any other Employer would be using such temporary employees in the ordinary course of business and Tenant or any other Employer is not ~~using such temporary employees as a means to avoid the requirements of this Agreement.~~ In addition, Tenant or any other Employer may hire employees on a temporary basis without complying with the provisions of this Agreement if Tenant or such other Employer reasonably determines that such hire is urgently needed to perform essential functions of its operation. In such event, the obligation to make Good Faith Efforts to fill such vacancies permanently with System referrals remains in effect unless Tenant or such other Employer provides evidence to City's reasonable satisfaction that re-filling such vacancy with System referrals would be infeasible or impracticable. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

12. **Collective Bargaining Agreements.** Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent

decrees, collective bargaining agreements, existing employment contracts, or applicable law. FSHA will take primary responsibility for integrating the requirements of the Program with any collective bargaining agreement.

13. **Remedies.** If Tenant or any of its Subcontractors or Subtenants fail to comply with this Agreement, Port or the City are entitled to the remedies set forth in Sections 83.10 and 83.12 of the San Francisco Administrative Code, but subject to any limitations set forth in this Agreement.

TENANT

LITERACY FOR ENVIRONMENTAL JUSTICE, a
California non-profit corporation

By: Sudheep M. Rao
Name: SUDEEP M. RAO
Its: SMR (EXEC. DIR.)

Date: 11/29/2007, 2007

By: [Signature]
Name: Milton Reynolds
Its: Board Chair, L&J

Date: 11/29, 2007

PORT

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

By: Monique Moyer
Name: MONIQUE MOYER
Its: Executive Director

Date: Dec 7, 2007

TENANT

LITERACY FOR ENVIRONMENTAL JUSTICE, a
California non-profit corporation

By: [Signature]
Name: DOUG LUKER
Its: EXEC. DIRECTOR

Date: 11/7/05, 200

By: [Signature]
Name: WALTER RAY
Its: MEMBER

Date: 11/1/05, 200

PORT

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

By: _____
Name: _____
Its: Executive Director

Date: _____, 200

EXHIBIT F

MITIGATION MEASURES

The mitigation measure required by the Negative Declaration for construction at Heron's Head Park is:

Mitigation Measure #1: Biological Resources. As a part of the project, and because there is a possibility that biological resources may be disturbed during construction, the sponsor has agreed to retain the services of a biologist. The biologist shall instruct all excavation crews on the project site of the potential for disturbance to biological resources. The sponsor shall evaluate the potential to save large native plants presently on the sites and replant them in conjunction with the proposed native plant re-vegetation.

No additional mitigations were required as a part of the Negative Declaration addendums prepared for the classroom project.

The following construction mitigations developed as part of the Southern Waterfront Supplemental EIR (SEIR) shall also apply to construction of the Living Classroom:

Mitigation Measure #2: Air Quality (Mitigation #C.5 from SEIR). The Port shall require that project sponsors direct construction contractors to implement a dust abatement program during the construction period to reduce the contribution of project construction to local PM-10 concentrations. Elements of this program, which is currently applied to all Port tenants, include the following:

- Water internal roadways and unpaved construction areas just prior to the morning and evening peak traffic periods (to limit the potential for major roadway traffic to entrain dust), limit speeds to 10 mph, and sweep paved internal roads after the evening peak period.
- In addition, water active sites (e.g., where demolition, excavation or other earth work is underway) at least twice per day. Increase the frequency of watering when wind speeds exceed 15 miles per hour. Suspend all excavating and grading operation when instantaneous gusts exceed 25 miles per hour.
- Replace ground cover in disturbed areas as quickly as possible.
- Enclose, cover, water twice daily, or apply soil binders to exposed stockpiles of sand, gravel, and dirt.
- Install gravel at construction equipment entrances to unpaved areas to prevent tracking of dirt and mud onto streets.
- Sweep paved access roads, parking areas, and construction staging areas, at the end of day (with water sweepers), and sweep adjacent City streets if any visible soil material is carried over to these streets.
- Cover all trucks hauling dirt, sand, soil, or other loose materials. Maintain at least six inches of freeboard between the top of the load and the top of the trailer.
- Sweep up dirt or debris spilled onto paved surfaces immediately to reduce resuspension of particulate matter through vehicle movement over these surfaces.

- Designate a person or persons to oversee the implementation of a comprehensive dust control program and to increase watering, as necessary.
- Maintain and operate construction equipment so as to minimize particulates from exhaust emissions. During construction, require contractors to operate trucks and equipment only when necessary. Equipment should be kept in good condition and well-tuned, to minimize exhaust emissions.
- Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the project sponsor shall require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose.

Mitigation Measure #3: Hydrology (Mitigation #D.1 from SEIR). The contractors shall be required to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) similar to that required under the statewide General Permit for Storm Water Discharges Associated with Construction Activity. The SWPPP would include site-specific information to identify and evaluate sources of pollutants associated with industrial activities and to identify and implement site-specific best management practices to reduce or prevent pollutants associated with industrial activities in storm water discharges. Best management practices may be non-structural (e.g., activity schedules, maintenance procedures, prohibitions of practices) or structural (e.g., treatment measures, runoff controls, overhead coverage). Elements of the SWPPP shall include erosion and sediment controls, best management practices for construction waste handling and disposal, and post-construction erosion and sediment control requirements.

Mitigation Measure #4: Geology, Soils and Seismicity (Mitigation #G.2 from SEIR). To minimize hazards to building occupants from non-structural damage, the Port shall require all tenants to carry out the following measures at a minimum: heavy objects shall be attached to secure walls and floors, and light, loose objects shall be placed to minimize their potential to move or overturn; large storage containers shall not be loosely stacked, and those stored on shelves shall have appropriate restraints or other means to prevent them from tipping or sliding off the shelves. Heavy objects like freezers, boilers, chillers, laboratory equipment, battery racks and electrical transformers, heavy storage cabinets, tanks, safes, oversize file cabinets, etc., shall be firmly secured to floors and walls to prevent their falling or sliding. All equipment using natural gas shall be anchored. Care shall be taken to avoid placement of such objects where they could topple or move and block exit doors. *(1997 FEIR Measure I-7b)*

Mitigation Measure #5: Geology, Soils and Seismicity (Mitigation #G.3 from SEIR). LEJ shall maintain on-site a 72 hour supply of potable water, food and basic medical supplies and tools to meet the needs of its employees during earthquakes or emergencies.

EXHIBIT G-1

WORK LETTER

This Work Letter sets forth Tenant's obligation to construct the initial improvements, consisting of the building, hardscape, landscape and other improvements described in Attachment 2 to this Work Letter (collectively, the "**Initial Improvements**") and shall be deemed part of the Lease (the "**Lease**") to which it is attached.

ARTICLE 1 - GENERAL TERMS

1.1 Definitions. Initially capitalized terms used in this Work Letter have the meanings given them when first defined. Any initially capitalized words or acronyms used but not defined in this Work Letter shall have the same meanings as in the Lease.

1.2 Relationship between Work Letter and the Lease. This Work Letter governs the Tenant's obligations to construct the Initial Improvements until such later date the Port issues a Certificate of Completion for the Initial Improvements. This Work Letter addresses, among other matters, the scope of Tenant's obligations to design and construct the Initial Improvements, Tenant's obligations to obtain final approvals for the Initial Improvements, and satisfy the Schedule of Performance. Before the termination of this Work Letter, this Work Letter shall control in the event of any inconsistency between this Work Letter and the Lease. Upon expiry of this Work Letter, the Lease alone will govern the rights and obligations of the parties with respect to use and occupancy of the Premises.

1.3 Term. This Work Letter shall commence and become effective as of the Commencement Date and shall expire on the Construction Period Expiration Date or such later date that the Port issues a Certificate of Completion for the Initial Improvements, as the case may be.

1.4 Lease Provisions. The provisions of the Lease, except where clearly inconsistent or inapplicable to this Work Letter, are incorporated into this Work Letter.

1.5 Third Party Administrator. Tenant shall, within fifteen (15) days of the issuance of a building permit for the Initial Improvements, at its sole cost and expense, retain a Third-Party Administrator ("TPA") subject to Port's approval, which shall not be unreasonably withheld, to perform the functions listed below. The TPA must be licensed in California and must have experience managing funds for construction projects. The City shall not be a party to the agreement with the TPA and shall have no responsibility for any payments to the TPA or for any failure or mispayment by the TPA.

(a) Establish a disbursement account at an FDIC-insured financial institution, from which withdrawals shall require signature of an authorized representative of the TPA.

(b) Receive and review payment requests from Tenant's contractors and materials suppliers with documentation sufficient to validate requests for payment (documentation to be specified in the agreement between TPA and Tenant).

(c) Forward requests for payment to the City and County of San Francisco Department of the Environment and the California State Coastal Conservancy the "Funders."

(d) Receive funds from the Funders in the form of checks payable to Tenant care of the specified disbursement account, and deposit such funds to the disbursement account.

(e) Prepare checks drawn on the disbursement account payable to each of Tenant's contractors or materials suppliers.

(f) Notify the Port, the Tenant's Contractors, and materials suppliers and the Funders immediately of any claim, suit or circumstance which could, in the opinion of the TPA, give rise to a claim or suit.

(g) Reserve funds equivalent to the amount of any liens, stop notices, or documented and potentially supportable claims or disputes, plus a reasonable sum (not to exceed twenty-five percent (25%) of the lien, stop notice, claim or dispute) for potential legal costs and attorney fees.

(h) Release to the Funders any funds remaining in the disbursement account in accordance with the conditions of Tenant's funding agreements with the Funders when the TPA has received all documentation necessary to document completion, including final payment to Contractors or suppliers, receipt of Certificate of Completion, and resolution of any claims or disputes.

1.6. Revision of DOE Grant Agreement. Tenant shall, without cost to Port, within fifteen (15) days of the issuance of a building permit for the Initial Improvements, enter into an amendment of the DOE grant agreement as needed to provide that DOE will release grant funds only at such time and in such amount as provided in written instructions from the TPA. Tenant shall provide a copy of such amendment to Port.

ARTICLE 2 - CONSTRUCTION OF THE INITIAL IMPROVEMENTS

2.1 Tenant's Construction Obligations.

(a) Project Requirements. Tenant shall construct or cause to be constructed all of the Initial Improvements in compliance with the Construction Documents, which shall conform to and be in compliance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Development and Schematic Drawings; (iii) the Mitigation Measures required to be performed by the project sponsor under the Lease; (iv) applicable building codes, standards and regulations, including without limitation, the Port Building Code; (v) required Regulatory Approvals; (vi) the Waterfront Plan; (vii) the design approved by the Port Commission and, if required, the Planning Commission, pursuant to Section 240 of the Planning Code; and (viii) the Lease including without limitation Sections 18, 39 and 40 thereof. All such requirements are sometimes referred to collectively as the "**Project Requirements.**"

(b) Scope of Development; Schedule of Performance. Tenant shall use commercially reasonable efforts to construct or cause to be constructed the Initial Improvements on the Premises within the times and in the manner set forth in this Work Letter and the scope of development comprised of the Schematic Drawings approved by the Port Commission at its public meeting of September 27, 2005, and attached hereto as Attachment 1 and the narrative document attached hereto as Attachment 2 (collectively, the “**Scope of Development**”). All construction with respect to the Initial Improvements shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Tenant, while performing any construction with respect to the Initial Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining properties and improvements, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

(c) Costs; Private Development. Tenant shall bear all of the cost of developing the Premises and construction of all Initial Improvements. Without limiting the foregoing, Tenant shall be responsible for performing all Premises preparation work necessary for construction of the Initial Improvements. Such preparation of the Premises shall include, among other things, investigation required for development or operation of the Initial Improvements, all structure and substructure work, disabled access improvements and public access improvements and tenant improvements.

2.2 Utilities. Tenant, at its sole expense, shall arrange for the provision and construction of all on-Premises utilities necessary to develop the Premises. Tenant and Port shall coordinate, if necessary, with respect to installation of any off-Premises utility infrastructure and design of the Initial Improvements, including providing advance notice of trenching requirements, and coordinate any modification of utilities to any adjacent Port tenants or uses.

2.3 Submittals after Completion. Tenant shall furnish Port both design/permit drawings in their finalized form and “As-Built” Drawings, specifications and surveys with respect to the Premises (core and shell, and tenant improvements) within sixty (60) days after completion of the Initial Improvements. If Tenant fails to provide such surveys and as-built plans and specifications to Port within such period of time, Port after giving notice to the Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port’s choice of final surveys and as-built plans and specifications, at Tenant’s sole cost, to be paid by Tenant to Port within thirty (30) days after Port’s request therefor.

2.4 Insurance. At all times during the construction of the Initial Improvements, in addition to the insurance required to be maintained by Tenant under the Lease, Tenant shall require Tenant’s contractor to maintain (a) commercial general liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage, including personal injury and death, and contractor’s protective liability, and products and completed operations coverage in an amount not less than \$500,000 per incident, \$1,000,000 in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than \$1,000,000 each accident for bodily injury and property damage, providing coverage at least as

broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than \$100,000 per accident, \$500,000 aggregate disease coverage and \$100,000 disease coverage per employee. Tenant shall cause its Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice. In addition, Tenant shall carry "Builder's All Risk" insurance covering the construction of the Initial Improvements as set forth in the Lease. The liability insurance shall be written on an "occurrence" basis and shall name Port as additional insureds (by endorsement reasonably acceptable to Port). All of the insurance required to be carried by Tenant or Tenant's Agents hereunder shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing, and applicable insurance in force for or on behalf of Port, shall provide that Port shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage, and shall be placed with companies which are rated A:X or better by Best's Insurance Guide and licensed to business in the State of California. All deductibles and self-insured retentions under Tenant's policies are subject to Port's reasonable approval, and all insurance, except workers' compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Tenant's compliance with the provisions of this Section 2.4 shall in no way limit Tenant's liability under any of the other provisions of this Work Letter or the Lease.

2.5 Compliance with Laws. At its sole cost and expense, Tenant shall comply (taking into account any variances or other deviations properly approved) with: (i) all Laws; (ii) all Regulatory Approvals which place requirements on the Initial Improvements; (iii) all requirements of all policies of insurance which may be applicable to the Premises as to the Initial Improvements or Tenant's Personal Property; and (iv) all other applicable Project Requirements. It is expressly understood and agreed that the performance required of Tenant by the preceding sentence shall include the obligation to make, at Tenant's sole cost and expense, all additions to, modifications of, and installations on the Premises which may be required by any Laws regulating the Premises or any insurance policies covering the Premises as to the Initial Improvements or Tenant's Personal Property. Tenant shall, promptly upon request, provide Port with reasonable evidence of compliance with Tenant's obligations under this Section.

2.6 Port and Other Governmental Permits.

(a) Generally. Tenant has the sole responsibility for obtaining all necessary permits for the Initial Improvements and shall make application for such permits directly to the applicable regulatory agency; provided, however, that where Port is required to act as a co-permittee for any permit Tenant shall apply for such permit in accordance with Section 6.2(b) of the Lease. Tenant has elected to use the Site Permit method described in Section 2.6(b) below and shall prosecute the application diligently to issuance.

(b) Site Permit.

(i) The so-called "Site Permit" method of permit approval for

construction of improvements allows construction to begin with an approved Site Permit and addenda. Construction may continue to completion through the issuance of addenda covering the remaining aspects and phases of construction not provided for under the initial approved portion of the building permit. Tenant may request the Port to allow Tenant to use the Site Permit method for construction of the Initial Improvements.

(ii) If Tenant elects to use and the Port allow the use of the Site Permit for construction of the Initial Improvements, Tenant shall submit the Final Construction Documents sequentially in accordance with the schedule of performance or addenda schedule approved for the Site Permit.

(iii) If the Site Permit or any addenda are not issued or will not be issued in accordance with the schedule of performance or addenda schedule, Tenant will advise Port in writing within three (3) days of such fact and state what it believes to be the reason for the delay. Port may then conduct its own investigation with Tenant as to the reason for the delay. If Port determines that the delay is due to acts or omissions of Tenant or was substantially contributed to by Tenant, Port will advise Tenant. Tenant shall then take all reasonable steps within its control and prepare all documents required for the issuance of the permit addenda within forty-five (45) days of the original permit addenda issuance date.

(iv) If Tenant decides to use the Site Permit process, it may change the regular building permit at any time before commencement of construction by electing to do so in written notice to Port. However, such a change may be made only if Port reasonably determines that the change will not delay the commencement and completion of construction dates specified in the schedule of performance or addenda schedule and that Construction Documents review by Port can be accommodated reasonably and in sufficient time for issuance of a full building permit and timely commencement of construction.

(v) Port's review of Final Construction Documents shall be limited to a determination of consistency with the approved Preliminary Construction Documents with respect to matters within the scope of Port's review and approval as set forth in Section 3.3, including satisfaction of any conditions to Port's approval of the Preliminary Construction Documents. Nothing herein shall limit Port's review in its regulatory capacity as issuer of the Site Permit and addenda thereto under applicable building codes, standards and regulations, including without limitation, the Port Building Code.

2.7 Port Rights of Access. Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Premises to the extent reasonably necessary to carry out the purposes of this Work Letter, including, but not limited to, the inspection of the work being performed in constructing the Initial Improvements upon reasonable prior written notice to Tenant during regular business hours; provided, however, Port shall take such reasonable action necessary to minimize any interference with Tenant's construction activities. Port will provide Tenant promptly upon request with a copy of any written reports prepared by Port or its Agents with respect to the Initial Improvements under any such inspection, subject to withholding documents otherwise privileged or confidential. Port disclaims any warranties, representations and statements made in any such reports, will have no liability or responsibility with respect to any such warranties, representations and statements, and

will not be estopped from taking any action (including, but not limited to, later claiming that the construction of the Initial Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

2.8 Construction Signs and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner describing the Initial Improvements, and shall post the signs on the Premises during the period of construction. The size, design, test and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Port for approval before installation pursuant to Port's sign policy, which approval may not be withheld unreasonably. Failure by Port to disapprove any such submission within thirty (30) days will be deemed approval.

ARTICLE 3 - PREPARATION AND APPROVAL OF PLANS

3.1 The Construction Documents.

(a) Definition of Construction Documents. The Construction Documents shall be as follows:

(i) "Schematic Drawings" for the Initial Improvements approved by the Port Commission at its public meeting of September 27, 2005 (and attached hereto as Attachment 1), which shall generally include, without limitation, the following:

(A) Perspective drawings sufficient to illustrate the Initial Improvements.

(B) A site plan at appropriate scale showing relationships of the Initial Improvements with their respective uses, designating public access areas, open spaces, walkways, buildings, loading areas, streets, parking, and adjacent uses. Adjacent existing and proposed streets, piers, arcades and structures should also be shown.

(C) Building plans, floor plans and elevations sufficient to describe the development proposal, the general architectural character, and the location and size of uses.

(D) Building sections showing height relationships of those areas noted above.

(ii) "Preliminary Construction Documents" in sufficient detail and completeness to show that the Initial Improvements and the construction thereof shall comply with the Project Requirements (as defined in Section 2.1(a) hereof), and which shall generally include, without limitation:

(A) Premises plan(s) at appropriate scale showing the buildings, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

- (B) All building plans and elevations at appropriate scale.
- (C) Building sections showing all typical cross sections at appropriate scale.
- (D) Floor plans.
- (E) Preliminary interior improvement plans.
- (F) Plans for proposed public access areas showing details including but not limited to, walls, fences, railings, benches, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, and trash containers.
- (G) Outline specifications for materials, finishes and methods of construction.
- (H) Interior and Exterior Signage Plans.
- (I) Exterior lighting plans.
- (J) Material and color samples.
- (K) Roof plans showing all mechanical and other equipment.

(iii) **“Final Construction Documents”** which shall include all plans and specifications required under applicable codes to be submitted with an application for a Premises Permit.

(b) Exclusion. As used in this Work Letter “Construction Documents” do not mean any contracts between Tenant and any contractor, subcontractor, architect, engineer or consultant.

3.2 Submission of Construction Documents. Tenant shall prepare and submit the Construction Documents to Port for review and approval as provided in Section 3.4 in accordance with the Scope of Development and at the time or times established in the schedule of performance or addenda schedule.

3.3 Scope of Port Review of Tenant’s Construction Documents.

(a) Scope of Review. Port’s review and approval of the Construction Documents under this Work Letter shall address (i) conformity with the Project Requirements, (ii) exterior architectural appearance and aesthetics, (iii) design and appearance of interior and exterior spaces, and (iv) design of any areas required under Regulatory Approvals, if any, to be accessible to the public.

(b) Effect of Review. Subject to the provisions of the last sentence of this subsection 3.3(b), Port’s review and approval of Construction Documents will be final and conclusive. Except by mutual agreement with Tenant, Port will not disapprove or require

changes subsequently in, or in a manner which is inconsistent with, matters which it has approved previously.

(c) Consolidated Design Review. The design of the Initial Improvements shall be subject to the design review process pursuant to San Francisco Planning Code Section 240. Port's review and approval of the Construction Documents shall not be inconsistent with the design matters previously approved by the Port Commission and, if required, the Planning Commission, pursuant to the Section 240 process, to the extent previously agreed to by Port.

3.4 Scope of Tenant Submissions of Construction Documents. The following provisions apply to all stages of Tenant's submission of Construction Documents. Each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage. The elements of the Preliminary Construction Documents requiring Port's approval shall be in substantial conformance with the Schematic Drawings and the Scope of Development, and shall incorporate conditions, modifications and changes specified by Port or required as a condition of Regulatory Approvals as approved by Port. Preliminary Construction Documents shall be in sufficient detail and completeness to show that the Initial Improvements and the construction of the Initial Improvements will be in compliance with the Project Requirements and matters previously approved. The Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents. The elements of the Final Construction Documents requiring Port approval shall incorporate conditions, modifications and changes required by Port for the approval of the Preliminary Construction Documents. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Initial Improvements to be constructed and completed in accordance with this Work Letter.

3.5 Construction Document Review Procedures.

(a) Role of Port Staff and Commission. As to the submittals referred to in the Scope of Development, Port's review and approval of those aspects of the Construction Documents over which it has approval rights under Section 3.4(a) hereof means and requires: (i) review and approval of required Preliminary and Final Construction Documents by Port's Executive Director or his designated Port representative; and (ii) review and approval of the design only by the Port Commission acting at a public meeting at the stage of submission of Schematic Drawings; provided, however, changes in Final Construction Documents from approved Preliminary Construction Documents will be submitted to the Port Commission for review and approval only if Port's Executive Director deems such changes to be materially inconsistent with the design approved by the Port Commission.

(b) Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Schedule of Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of Performance. If Port fails to either approve or disapprove within five (5) days after Tenant's second written request made to Port after such ninety (90) day period, the applicable Construction Documents shall be deemed approved.

(c) Timing of Port Disapproval/ Conditional Approval and Tenant Resubmission. If Port disapproves those aspects of the Construction Documents subject to its approval under Section 3.4(a) hereof in whole or in part, Port in the written disapproval shall state the reason or reasons and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions shall be stated in writing and a time shall be stated for satisfying the conditions. Tenant shall make a resubmittal as expeditiously as possible. Tenant may continue making resubmissions until the approval of the submissions or the time specified in any conditional approval.

3.6 Changes in Construction Documents.

(a) Approval of Changes in Construction Documents. Tenant shall not make or cause to be made any material changes in any Port-approved Construction Documents including without limitation, the Final Construction Documents, without Port's express written approval in its reasonable discretion as provided in Section 3.6(b) below. Prior to making any changes that Tenant considers to be non-material to any Port-approved Construction Documents, including, without limitation, substituting materials which are the architectural equivalent as to cost, aesthetic appearance, quality, color, design and texture, Tenant shall notify Port in writing of such proposed changes. If Port in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to Port's approval under Section 3.6(b). Port's determination of whether such changes are material will be conclusive. Without otherwise limiting the requirements of this Section 3.6(a), any changes that cost Two Thousand Dollars (\$2,000.00) or less in the aggregate and that would not otherwise affect the structural elements of the Initial Improvements shall be presumed to be non-material changes.

(b) Response. Tenant shall request in writing Port's approval in connection with all material changes to the Construction Documents including without limitation, the Final Construction Documents. Port shall respond to Tenant in writing within thirty (30) days after receipt of Tenant's request. If Port fails to respond within fifteen (15) days after Tenant's second written request made to Port after the thirty (30) day period, such changes will be deemed approved.

3.7 Progress Meetings/Consultation. During the preparation of Construction Documents, Port staff and Tenant agree to hold regular progress meetings, as appropriate considering Tenant's Construction Document progress, to coordinate the preparation of, submission to, and review of Construction Documents by Port. Port staff and Tenant (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration. Such meetings shall continue as appropriate as determined by Port until the Completion of Construction.

ARTICLE 4 - NO FORCE MAJEURE

4.1 Completion of Construction. Tenant shall use its best efforts to commence, prosecute and complete construction of the Initial Improvements in a timely manner.

4.2 No Force Majeure. Notwithstanding anything to the contrary stated herein or the Lease, Tenant's obligation to Complete construction of the Initial Improvements as set forth in Section 4.1 above shall be final and absolute and shall not be subject to force majeure, Port delays, Regulatory Approval delays or any other delays.

ARTICLE 5 - CERTIFICATE OF COMPLETION

5.1 Certificate of Completion.

(a) Issuance Process.

(i) Before issuance by Port of a Certificate of Completion and satisfaction of conditions precedent to occupancy set forth in Section 1.2(c) of the Lease, the Tenant may not occupy the Initial Improvements on the Premises, or any portion of the Initial Improvements, except for construction purposes under this Work Letter or the Lease, or in accordance with Section 5.4, below.

(ii) After Tenant has Completed the construction of the Initial Improvements in accordance with all the provisions of this Work Letter, including, but not limited to, the Project Requirements, Tenant may request a Certificate of Completion in writing. The Port shall act on the Tenant's request within sixty (60) days of receipt.

(iii) The Port's issuance of any Certificate of Completion does not relieve the Tenant or any other Person from any obligations to secure or comply with any Regulatory Approval of any agency (including the Port) that may be required for the occupancy or operation of the Initial Improvements.

(b) Condition to Approval. If there remain uncompleted (i) customary punch list items, (ii) landscaping (to the extent (i) and (ii) are subject to the Port's approval), (iii) exterior finishes (to the extent the Tenant can demonstrate to the Port's reasonable satisfaction that such exterior finishes would be damaged during the course of later construction of interior improvements), or (iv) any other item that Port approves in writing in its sole and absolute discretion (collectively "**Deferred Items**"), the Port may reasonably condition approval upon provision of security or other assurances in form, substance and amount satisfactory to the Port that all the Deferred Items will be completed in a timely fashion. Such security may include a letter of credit (in a form and issued by an institution acceptable to the Port) in the amount of one hundred ten percent (110%) of the cost of completion of the Deferred Items as reasonably determined by the Port. The obligations set forth in this subsection shall survive a termination of the Lease.

(c) Definition of Completed. For purposes of this Work Letter and the Port's issuance of a Certificate of Completion in accordance with the provisions of Section 5.1(a), "**Completed**" means completion by the Tenant of all aspects of the Initial Improvements in accordance with the Project Requirements, and in compliance with all Regulatory Approvals needed for the occupancy and development of the Project or provision of security satisfactory to Port for Deferred Items under Section 5.1(b), and issuance of applicable certificates of occupancy for all of the Initial Improvements.

5.2 Form and Effect of Certificate.

(a) Form of Certificates. The Certificate of Completion will be in the form of Attachment 3 attached hereto, and which permits it to be recorded in the Official Records. For purposes of this Work Letter, the Certificate of Completion will be a conclusive determination of Completion of the Initial Improvements (except for completion of Deferred Items).

(b) Effect. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code, and is not in lieu of a certificate of occupancy to be issued by the City in its regulatory capacity, which is separately required for occupancy and is a condition precedent to issuance of a Certificate of Completion.

(c) Termination of Obligations Upon Recordation. Recording of the Certificate of Completion by the City (or by the Tenant at the written request and authorization of the City) will terminate Tenant's obligations under this Work Letter; provided, however, that such termination shall not relieve Tenant of its obligations to complete the Deferred Items as set forth in Section 5.1(b), above, nor shall such termination relieve Tenant of its obligations pursuant to any of the other provisions of this Work Letter which expressly survive such a termination. At the request of the Tenant, following recordation of a Certificate of Completion, the Port will execute and acknowledge a quitclaim or other documentation, in form reasonably satisfactory to the Port, as may be required by any title company, Lender or Tenant to confirm the complete termination of Tenant's obligations under this Work Letter.

5.3 Failure to Issue. If Port refuses or fails to furnish a Certificate of Completion, the Port shall, within the sixty (60) -day period specified in Section 5.1(a)(ii), above, provide the Tenant with a written statement specifying the reasons the Port refused or failed to furnish the Certificate and identifying the items the Tenant shall complete or requirements it shall satisfy to obtain a Certificate of Completion.

5.4 Permission for Phased Occupancy. Tenant may request permission to occupy portions of the Premises before issuance of a Certificate of Completion, subject to satisfaction of conditions precedent to occupancy set forth in Section 1.2(c) of the Lease. Each such request shall specify the portions of the Premises which the Tenant wishes to occupy and the intended date of occupancy. Port will approve such occupancy and issue an estoppel letter in a form and substance reasonably satisfactory to the Parties within five (5) days of such request if Port has issued temporary certificates of occupancy for such portions of the Premises, the conditions set forth in Section 1.2(c) have been satisfied, and no uncured Tenant Event of Default exists.

ARTICLE 6 - TERMINATION OF LEASE

6.1 Plans and Data. If the Lease terminates as a result of an Event of Default by Tenant before Completion of the Initial Improvements, Tenant shall assign and deliver to Port any and all copies of reports in its possession regarding the Premises and all Construction Documents in the possession of or prepared for Tenant, for the development of the Premises within thirty (30) days after written demand from Port. Port may use said reports and Construction Documents for any purpose whatsoever relating to the Premises, without cost or liability therefor to Tenant or any other Person; provided, however, Port shall release Tenant and

Tenant's contractor, architect, engineer, agents, employees and other consultants from any Losses arising out of Port's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by Port to complete the Initial Improvements. Tenant shall include in all contracts and authorizations for services pertaining to the planning and design of the Initial Improvements an express agreement by the Person performing such services that Port may use such reports or Construction Documents as provided in this Section 6.1 without compensation or payment from the Port in the event such reports or Construction Documents are delivered to Port under the provisions of this Section 6.1, provided that Port agrees (i) not to remove the name of the preparer of such reports of Construction Documents without the preparer's written permission or (ii) to remove it at their written request.

6.2 Return of Premises. If the Lease terminates during the Construction Period Term due to an Event of Default by Tenant, Tenant shall, at its sole expense and as promptly as practicable, return the Premises to Port in a safe condition, and unless otherwise requested by Port, shall remove all Improvements, loose building materials and debris present at the Premises resulting from Tenant's construction activities. In the event that Tenant is required to return the Premises as aforesaid, Tenant shall obtain those permits customary and necessary to enter upon the Premises in order to complete such work and shall otherwise comply with applicable Law. In such event, Port shall cooperate with Tenant in Tenant's efforts to obtain such permits, provided that Port will not be required to expend any money or undertake any obligations in connection therewith. Notwithstanding any such termination, Tenant shall remain responsible for any obligations with respect to the Investigation and Remediation of Hazardous Materials to the extent provided in the Lease. The provisions of this Section shall survive any termination of the Lease.

ATTACHMENTS

ATTACHMENT 1 SCHEMATIC DRAWINGS
ATTACHMENT 2 SCOPE OF DEVELOPMENT
ATTACHMENT 3 CERTIFICATE OF COMPLETION

EXHIBIT H

ASSIGNMENT AND ASSUMPTION OF LEASE AND CONSENT

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AND CONSENT ("Agreement") dated as of _____, (the "Effective Date") is entered into by and between LITERACY FOR ENVIRONMENTAL JUSTICE, a California non-profit corporation ("Assignor"), _____, a _____ ("Assignee") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the SAN FRANCISCO PORT COMMISSION (the "Port").

RECITALS

A. By that certain Lease dated as of September 27, 2005, a copy of which is attached hereto as Exhibit A ("Lease"), Assignor, as the lessee, entered into a lease with the Port, as the fee title holder, regarding the construction, maintenance and operation of a "Living Classroom" of approximately 1,450 square foot building and related improvements on real property located in the City and County of San Francisco generally known as the Heron's Head Park and as more particularly described in the Lease (the "Property").

C. Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, all of Assignor's right, title and interest in, to and under the Lease.

D. Port consents to the foregoing assignment on the terms and conditions set forth below.

AGREEMENT

Now, therefore, for value received, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Assumption. As of the Effective Date, Assignor hereby assigns to Assignee all of Assignor's right, title and interest in, to and under the Lease and Assignee accepts such assignment and agrees to perform all of the obligations of Assignor that may accrue or become performable from and after the Effective Date by Tenant under the terms and conditions of the Lease. Port acknowledges that pursuant to the terms of the Lease, Assignor's assignment of all its right, title and interest in, to and under the Lease to Assignee by way of this Agreement shall release Assignor of all of the obligations of the Lease and that Port may only look to Assignee for the full performance of all of the terms and conditions of the Lease on and after the Effective Date.

2. Representations. Assignor hereby represents to Assignee that as of the Effective Date: (a) the Lease is in full force and effect, constitutes the entire agreement between Assignor and Port relating to the Property and has not been amended or modified either orally or in

writing; (b) there is no existing breach or default by Port or Assignor under the Lease, and Port has no claims or demands against Assignor under the Lease or otherwise; (c) to Assignor's actual knowledge, no event has occurred or condition exists, which, with or without notice or the passage of time, or both, would constitute a breach or default by Port or Assignor under the Lease; (d) Assignor has received no notice from Port claiming any breach or default by Assignor under the Lease; and (e) there are no leasing commissions or other fees or commissions presently owed or which will become due and payable with respect to the Lease or which could become due and payable in the future upon the exercise of any right or option in the Lease, except as otherwise disclosed to Assignee in writing in Exhibit B attached hereto and made a part hereof.

3. Indemnification. Assignor hereby agrees to indemnify Assignee, defend Assignee with counsel selected by Assignee and hold Assignee harmless from and against all liability, loss, damage cost and expense, including specifically, but without limitation, reasonable attorneys' fees and costs of court, which Assignee may suffer or incur by reason of any act or cause of action occurring or accruing prior to the Effective Date of this Assignment and arising out of or in connection with the Lease, except those specifically assumed by Assignee hereunder set forth in Exhibit C attached hereto and made a part hereof. Assignee hereby agrees to indemnify Assignor, defend Assignor with counsel selected by Assignor and hold Assignor harmless from and against all liability, loss, damage, cost or expense, including specifically, but without limitation, reasonable attorneys' fees and costs of court, which Assignor may suffer or incur by reason of any act or cause of action occurring or accruing on or after the Effective Date of this Assignment and arising out of or in connection with the Lease.

4. Consent to Assignment. The Port hereby consents to Assignor's assignment of the Lease to Assignee pursuant to the terms of this Agreement. This consent shall not be construed as the Port's consent to any further assignment by Assignee of the Lease or the Property.

5. 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 Assignor and Assignee, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary or otherwise. Each party hereto shall execute, acknowledge and deliver to each other party all documents, and shall take all actions, reasonably requested by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Agreement. 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. Time is of the essence of this Agreement. This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, Port, Assignor and Assignee execute this Agreement at San Francisco, as of the date set forth above.

ASSIGNOR:

LITERACY FOR ENVIRONMENTAL JUSTICE,
a California non-profit corporation

By [Signature]
Its Exec. Director

By [Signature]
Its [Signature]

ASSIGNEE:

a _____

By _____
Its _____

By _____
Its _____

PORT:

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

By _____
Its: _____

Dated: _____

APPROVED AS TO FORM:

_____, City Attorney

By: _____
Deputy City Attorney

Port Commission Resolution No. _____
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EXHIBIT A
COPY OF LEASE

**EXHIBIT I
FORM OF PORT RELEASE**

RELEASE AGREEMENT

THIS RELEASE AGREEMENT ("Agreement") is made and entered into as of _____ 200_ (the "Effective Date"), by and between Literacy for Environmental Justice, a California non-profit corporation ("Tenant"), and the City and County of San Francisco, a municipal corporation ("City"), operating by and through the San Francisco Port Commission ("Port").

RECITALS

This Agreement is made and entered into with reference to the following facts:

- A. Port and Tenant entered into that certain Lease dated as of September 27, 2005, whereby Tenant has the right to construct, maintain and operate the Living Classroom and other improvements at the Heron's Head Park owned by the Port (the "Property") as more particularly described in the Lease.
- B. Tenant now wishes to assign all its right, title and interest in and to the Lease to the undersigned assignee ("Assignee"), pursuant to that certain Assignment and Assumption of Lease and Consent dated _____, 200_, by and among Tenant, Port and Assignee (the "Assignment Agreement"). Assignee has agreed to assume all the obligations of Tenant from and after the effective date of the Assignment Agreement.
- C. Port now wishes to release Tenant from its obligations, monetary and non-monetary, arising under or pursuant to the Lease and any documents or obligations relating thereto as set forth herein.

AGREEMENT

In light of the foregoing Recitals and in consideration of the mutual promises set forth below, the parties hereto agree as follows:

1. Release. As of the Effective Date, Port, on behalf of itself and the City, its affiliates, agents, representatives, beneficiaries, predecessors, successors and assigns ("Releasing Parties"), agrees to absolutely and forever discharge and release Tenant and its past, present and future parent, subsidiary and affiliated corporations, partners, joint venturers, predecessors, successors and assigns, shareholders, officers, directors, attorneys, employees, representatives, heirs, executors, affiliates, alter egos, spouses and agents (collectively, "Releasees") from any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, covenants, agreements, representations, actions and causes of action of any kind, whether past, present or future, real or imagined, existing or claimed to exist, foreseen or unforeseen, known or unknown, asserted or unasserted (collectively, the "Losses"), which the Releasing Parties may suffer or incur by reason of any act or cause of action occurring or accruing on or after the Effective Date and are in any way related to or arising out of the Lease or any other matter, action or transaction related thereto. The Releasees acknowledge and agree that the foregoing discharge and release shall not extend to and that they shall remain liable for all Losses which the

Releasing Parties may suffer or incur by reason of any act or cause of action occurring or accruing prior to the Effective Date and are in anyway related to or arising out of the Lease, or any other matter, action or transaction related thereto, unless those liabilities or Losses are expressly assumed in writing by the Assignee pursuant to the Assignment Agreement.

2. Waiver. Port acknowledges that there is a risk in that, subsequent to the execution of this Agreement, Port may incur, suffer or sustain injury, loss, damage, costs, attorneys' fees, expenses, or any of these, which are unknown and unanticipated at the time this Agreement is signed or which are not presently capable of being ascertained. Port further acknowledges that there is a risk that such damages known may become more serious than Port now expects or anticipates. Nevertheless, Port acknowledges that this Agreement has been negotiated and agreed upon in light of those realizations and hereby expressly waives all rights it may have in such unsuspected claims. In so doing, Port has had the benefit of counsel, has been advised of, understands and knowingly and specifically waives its rights under California Civil Code, Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"

3. Binding Effect. This Agreement governs the rights of, binds, and inures to the benefit of all parties hereto, their predecessors, successors and assigns, their employees, agents, and representatives, and any persons or entities acting on their behalf.

4. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to any obligations Tenant may owe to Port with respect to the obligations and claims released herein ("Released Claims"). This Agreement supersedes all prior and contemporaneous agreements and/or obligations concerning the Released Claims, and all prior representations and understandings of the releasing parties regarding the Released Claims, all of which are merged into this Agreement.

5. Attorneys' Fees. In the event of any dispute between the parties hereto arising out of, or in connection with, the provisions of this Agreement or any documents executed and delivered pursuant to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs of suit, and necessary disbursements, in addition to whatever damages or other relief it may be entitled to in connection with such dispute.

6. Applicable Law. This Agreement shall be construed under and shall be deemed to be governed by the laws of the State of California, without giving effect to any principles of conflicts of law if such principles would operate to construe this Agreement under the laws of any other jurisdiction.

7. Modification. No supplement, modification, waiver, or amendment with respect to this Agreement shall be binding unless executed in writing by the party against whom enforcement of such supplement, modification, waiver, or amendment is sought.

8. Counterparts. This Agreement maybe signed in counterparts by the parties hereto and shall be valid and binding on each party as if fully executed all on one copy.

9. Severability. If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance,

then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

TENANT:

LITERACY FOR ENVIRONMENTAL
JUSTICE, a California non-profit corporation

By: [Signature]

Its: [Signature]

PORT:

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

By: _____

Its: _____

APPROVED AS TO FORM:

CITY ATTORNEY OF SAN FRANCISCO

By: _____

Its: _____

ADDENDUM TO LEASE NO. L-13816 BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO, THROUGH THE SAN FRANCISCO PORT COMMISSION, AS LANDLORD, AND LITERACY FOR ENVIRONMENT A NON-PROFIT ORGANIZATION AS TENANT

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

Port and Tenant hereby agree as follows:

1. Recital D shall hereby be amended by adding the following sentence:

The Board of Supervisors approved the Lease in January 2006 (BoS Reso. No. 60-06).

2. Recital E shall hereby be added to the Lease as follows:

In August 2007, the Port Commission approved Resolution No. 07-63 authorizing a revision of the Lease to allow Tenant to provide the following protections in lieu of a "Performance Materialmen's Completion Bond" which Port staff and Tenant deemed to be not commercially available: (i) Tenant must retain a third party administrator, whose selection shall be subject to the Port's approval, to financially oversee the construction of the Initial Improvements as defined in the Work Letter and to ensure that payments are properly made; (ii) Port may terminate the Lease and Tenant will forfeit all Port-held monies in the case of cost overruns which Tenant cannot subsequently fund as detailed in Section 9.3 of the Lease; and (iii) Tenant's contractors must provide performance bonds for their respective scopes of work.

The Board of Supervisors approved the revisions to the Lease in October 2007 (BoS Resolution 553-07; File No. 071310).

3. Section 1.2 (Commencement Date) of the Lease is hereby amended in its entirety to read as follows:

(a) Commencement Date. The effectiveness of this Lease shall commence on the date (the "**Commencement Date**") all of the following conditions are satisfied (or, if differing dates, the date of the final condition to be satisfied): (i) Issuance of performance bonds as described in Section 18.1(viii) to Tenant's contractors by a surety company licensed by the state of California and approved by the Port; (ii) Port's receipt of the Removal Fee as described in Section 15.2; (iii) Port's receipt from Tenant of the Capital Improvements Fee as described in Section 8.1(a) as well as all other fees and deposits required under this Lease; (iv) approval by San Francisco Port Commission; (v) approval by San Francisco Board of Supervisors; and (v) full execution and delivery of this Lease. Promptly following the Commencement Date, the Parties shall execute and deliver a memorandum confirming the Commencement Date; provided, however, that failure to do so shall not delay or modify the Commencement Date or affect the respective rights or obligations of the Parties under this Lease.

4. Section 1.2(c) (Operational Date) The Lease is hereby amended in its entirety to read as follows:

(c) Operational Date/Occupancy Date. Upon the Commencement Date, Port shall deliver possession of the Premises to Tenant and Tenant shall have the right to commence construction of the Initial Improvements in accordance with the terms of this Lease. The "**Commencement Date**", the "**Occupancy Date**", and the "**Operational Date**" are all the same date for all purposes under this Lease.

5. Section 9.3 (Lease Termination) is hereby added to the Lease to read as follows:

9.3 Lease Termination. If at any time during the construction of the Initial Improvements, Port determines in its sole discretion that Tenant has used or committed to use the entire amount of its construction contingency of Forty One Thousand Six Hundred (\$41,600.00) which is seven percent (7%) of the total construction cost based on Tenant's contracts as of the Commencement Date ("**Construction Contingency**"), Port may provide Tenant with a written notice ("**Construction Contingency Depletion Notice**"). LEJ shall have ninety (90) days from the date of the Construction Contingency Depletion Notice to demonstrate, to Port's satisfaction, that Tenant has secured additional monies to replenish the Construction Contingency in an amount equal to seven percent (7%) of the remaining construction costs as determined by Port in its reasonable decision. Upon Tenant's failure to replenish to the required amount, Port may, in its sole discretion, declare an Event of Default and pursue its remedies pursuant to Section 23 of the Lease, including, without limitation, termination of the Lease. Upon Lease termination pursuant to this Section 9.3, notwithstanding any other provision of this Lease, LEJ will forfeit any and all monies held by the Port, including without limitation: the Security Deposit of \$5,000 as provided by Section 15.1; the Removal Fee of \$15,000 as provided by Section 15.2; and the Capital Improvements Fee of \$48,000 as provided by Section 8.1 and any and all interest thereon. Notwithstanding any other provision of this Lease, Port may use such forfeited funds for any purpose. In the event of Lease termination in accordance with this Section, Port shall have no further obligations to Tenant, including without limitation, any obligation to reimburse Tenant for any costs related to the Improvements Tenant may have made to the Premises. In no event shall Port be liable to Tenant for any loss of business to Tenant or any other costs or losses of any kind or nature whatsoever incurred by Tenant as a result of any termination of this Lease.

6. Section 18.1(a)(viii) (Materialmen's Completion Bond) of the Lease is hereby amended in its entirety to read as follows:

(viii) Payment and Performance Bonds. Before Tenant shall commence construction of the Initial Improvements, and before any building materials have been delivered to the Premises by Tenant or under Tenant's authority, Tenant shall furnish Port, at Tenant's sole cost and expense, a payment (labor and materials) bond and performance bond for each of Tenant's contractors in a form acceptable to Port and each in an amount not less than one hundred percent (100%) of final construction bid to for each contractor's scope of work ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work. The bond(s) shall designate Tenant's contractor's as Principal and both Tenant and Port as co-obligees.

Tenant's failure to provide Bond(s) in accordance with this Subsection (viii) shall prevent the effectiveness of this Lease.

7. Section 19.3 (Hazardous Materials Disclosure) is hereby added to the Lease to read as follows:

19.3 Hazardous Materials Disclosure. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to contamination commonly found in fill, including metals, volatile organic compounds, polynuclear aromatic hydrocarbons and naturally occurring asbestos. As further described in the Soil Characterization Report and Management Plan, Pier 98 (Tetrtech 5/6/98) and Results of Soil Sampling and Health Risk Assessment Heron's Head Park (Geomatrix 2/04), copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

8. Sections 40.10 through 40.16 are hereby added to the Lease to read as follows:

40.10 Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

40.11 Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the Term Tenant shall immediately notify the Port.

40.12 Charter Provisions. This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

40.13 Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

40.14 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Facility and encouraging use of such facilities, all at Tenant's sole expense.

40.15 Food Service Waste Reduction Ordinance. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth herein. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

40.16 FEMA Disclosure Notice.

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for San Francisco Bay Area communities. As part of this effort, FEMA plans to prepare a FIRM for the City for the first time. That process may have significant impacts for developing new buildings and reconstructing or repairing existing buildings on certain parts of the San Francisco waterfront.

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to the flood plain that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA").

Because FEMA has not previously published a FIRM for the City, there are no identified SFHAs within the City's geographic boundaries. By June 2007, FEMA expects to complete a study of the San Francisco Bay that potentially may identify SFHAs affecting City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including, but not limited to, parts of Mission Bay, Hunter's Point Shipyard, Candlestick Point, and Treasure and Yerba Buena Islands. During the summer of 2007, FEMA expects to issue a preliminary FIRM for review and comment by the City. FEMA anticipates finalizing the FIRM in 2008. If FEMA does identify SFHAs along the City's shoreline in San Francisco Bay, such SFHAs would likely be designated "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action).

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a Federal program that enables property owners, businesses and residents in participating communities to purchase flood insurance backed by the Federal government. Participation in the NFIP is based on an agreement between the local government and the Federal government, which requires the local government to adopt and enforce a floodplain management ordinance to reduce future flood risks. As part of such a floodplain management ordinance, the local jurisdiction must impose significant restrictions on construction of new or substantially improved structures located in SFHAs and ban construction of certain new structures seaward of the mean high tide line, unless appropriate variances can be granted. Federally backed lenders must require the purchase of flood insurance for residential and commercial structures located in SFHAs. Otherwise, purchase of flood insurance is voluntary.

The City does not currently participate in the NFIP and is evaluating the benefits of future participation in the NFIP once FEMA publishes a FIRM for the City. If the City does not participate in the program, the Federal government would not require the City to enact the building code restrictions and/or prohibitions required by the NFIP, but the Federal government would withhold the following federal benefits from the City: (1) no San Francisco property owner, business owner or resident, including without limitation, tenants of the Port of San Francisco, would be able to purchase flood insurance backed by the federal government, which is the primary source of reasonably-priced flood insurance (2) Federally backed loans for real property located within SFHAs, which must carry flood insurance, would be limited; (3) Federal grants for acquisition and construction purposes in SFHAs would be limited; and (4) in the event of a flood, property located within SFHAs would not be eligible for certain other federal loan or disaster assistance programs.

If the City does elect to participate in the NFIP, the City would be required to include in its floodplain management ordinance a requirement that any new construction or substantial improvement of structures in A zone or V zone SFHAs be elevated to certain prescribed heights or in some cases floodproofed, as well as a prohibition on any new construction or substantial

improvement of structures seaward of mean high tide in V zone SFHAs. The NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

9. Exhibit G (Work Letter) of the Lease shall be replaced with Exhibit G-1, attached hereto.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the day and year first above written.

TENANT: LITERACY FOR ENVIRONMENTAL JUSTICE,
a California non-profit corporation

By: _____
Title _____

By: _____
Title _____

Dated: _____

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

By: _____
Monique Moyer, Executive Director

Dated: _____

APPROVED AS TO FORM:

DENNIS HERRERA, City Attorney

By: _____
Deputy City Attorney

Dated: _____

Port Commission Resolution No. _____
Board of Supervisors Resolution No. _____

**MUTUAL TERMINATION AGREEMENT
(LEASE L-13816 AND RELATED AGREEMENTS)**

This Mutual Termination Agreement (this "**Agreement**"), dated for reference purposes only as of [Insert Board of Supervisors approval date] is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating through the SAN FRANCISCO PORT COMMISSION ("**Port**"), as landlord, and Literacy for Environmental Justice, a California corporation, as tenant ("**Tenant**").

RECITALS

A. Port and Tenant entered into Port Lease No. L-13816 dated as of September 27, 2005 for reference purposes only, as revised by an Addendum to the Lease (together, the "**Lease**"), for that certain real property located at Heron's Head Park as more particularly described in the Lease (the "**Premises**") for a 10-year term ending on December 6, 2017. The Lease and Addendum were approved by Port Commission Resolution Nos. 05-64 and 07-63 and Board of Supervisors Resolution Nos. 60-06 and 553-07. Port and Tenant have entered into other agreements regarding the use of the Premises, including License No. 14831 for installation of a potable water supply line (the "**License**") and an Agreement Protecting the Public Interest in Certain Improvements and Development dated July 16, 2008 with the Port and California State Coastal Conservancy ("**SCC**") and a Letter Agreement Regarding Mayor's Office of Housing Division of Community Development Funding for Improvements at The EcoCenter at Heron's Head Park dated February 16, 2010 with the Port and the Mayor's Office of Housing, Division of Community Development ("**MOCD**") (the other agreements collectively, the "**Related Agreements**").

B. Tenant secured funding from the City and County of San Francisco Department of the Environment, the SCC, the MOCD, and other public and private sources to construct a green building demonstration project and environmental education center at Heron's Head Park. In accordance with the Lease, the License, and the Related Agreements, Tenant constructed improvements on the Premises, including site preparation and grading, and construction of an approximately 2,292 square foot building comprised of a large general assembly room, two bathrooms, two small office/storage rooms, and an indoor wastewater treatment system.

C. Port and Tenant now desire to terminate the Lease and the License. The parties are making this change so that the Port may seek a successor building operator to operate the EcoCenter and achieve the public benefit originally intended. As material consideration for this Agreement, each party will release the other party from all obligations and potential liabilities under or related to the Lease, including the related agreements, except for any obligations that expressly survive the Lease and the License and Tenant's indemnification obligations under this Agreement.

D. Tenant is in good standing.

E. All capitalized terms used in this Agreement but not otherwise defined shall have the meaning given to them in the Lease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby mutually 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. Lease Termination and Surrender. Tenant shall surrender the Premises and all Improvements and Alterations thereon in compliance with Section 34 (Surrender and Quitclaim) of the Lease no later than 30 days after execution of this Agreement by Port ("**Termination Date**"). Port will

provide Tenant with 30 days advance written notice of the Termination Date, together with a fully executed counterpart of this Agreement, and Port and Tenant will conduct a joint exit inspection of the Premises to ensure proper surrender prior to the Termination Date.

3. Security Deposit, Capital Improvements Fee and Removal Fee. As a material part of the consideration for this Agreement, Tenant shall forfeit to Port the Security Deposit, Capital Improvements Fee and Removal Fee for the Lease. Port shall retain all such monies free of any claim by Tenant.

4. Continuing Rights and Obligations. From and after the Termination Date, neither Port nor Tenant shall have any rights or obligations to each other under the Lease or the License except for obligations that expressly survive termination or as set forth in this Agreement. Tenant acknowledges and agrees that Port may immediately lease the Premises to a new tenant or tenants in its sole discretion.

5. Tenant's Obligations.

5.1 Tenant shall, at its sole cost and expense, cooperate fully with Port in any matter that involves the termination of the Lease and the License, such as obligations under the Related Agreements, surrender of the Premises, provision of documents and reports, appearances before decision-making bodies and the like.

5.2 Tenant acknowledges that it received funding for construction of the EcoCenter and the activities conducted under the Lease, the License, and the Related Agreements from various third party funders, including but not limited to those listed in Recital B. With respect to such third party funders, Tenant shall, at its sole cost, fully cooperate with all efforts by the SCC, MOCD, and Port to identify a new tenant for the Premises under the Related Agreements.

5.3 Tenant shall indemnify, protect, defend, and hold harmless forever ("**Indemnify**" or "**Indemnification**") Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and, if requested, shall defend them, without cost to the Indemnified Parties, against any and all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief direct or vicarious liability, damage, injury or loss ("**Claims**") directly or indirectly by any third party arising out of the Lease, License, the Related Agreements, or this Agreement regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Agreement 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 Agreement. The Indemnification obligations of Tenant set forth in this Agreement include all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Agreement shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Agreement, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such Claim is tendered to Tenant by the Indemnified Parties and shall continue at all times thereafter until resolved.

6. Tenant's Waiver. As a material part of the consideration for this Agreement, Tenant, on behalf of itself and its Agents, hereby fully and irrevocably releases, discharges, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, Port, or any and all of Port's Agents with respect to any and all Claims of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the Lease, the License, the Related Agreements, or this Agreement. Tenant acknowledges that the parties are entering into this Agreement at its request, that it is not being displaced from the Premises by any action of Port and, therefore, that Tenant is not entitled to relocation benefits under any statute or law providing for relocation benefits and waives any claims for relocation benefits in relation to the Lease and the License.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to the Claims released in this Agreement, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASE MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE RELEASE AT THE TIME THIS AGREEMENT WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Initials: _____

Tenant

7. No Representation or Warranty by Port. Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

8. Entire Agreement. This Agreement contains all of the representations and 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 the 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.

9. 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, the License, or the Related Agreements, the terms of this Agreement shall prevail. Time is of the essence of this

Agreement. This Agreement shall be governed by the laws of the State of California. 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.

10. Effective Date. The Effective Date of this Agreement is the date of Port's execution as indicated below.

[SIGNATURES ON FOLLOWING PAGE]

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

By: _____
Susan Reynolds
Deputy Director, Real Estate

Dated: _____

TENANT: Literary for Environmental Justice, a California corporation

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Rona H. Sandler
Deputy City Attorney

Agreement Prepared By: Carol Bach, Environmental & Regulatory Affairs Manager,
Planning & Development Division _____ (Initial) and

Jeff Bauer, Senior Leasing Manager,
Real Estate Division _____ (Initial) _

Port Commission Resolution No. _____

Board of Supervisors Resolution No. _____



MEMORANDUM

September 22, 2005

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Sue Bierman, Commissioner
Hon. Kimberly Brandon, Commissioner
Hon. Ann Lazarus, Commissioner

FROM: Monique Moyer *Teach*
Executive Director

SUBJECT: ~~Approval of Ground Lease~~ with Literacy for Environmental Justice for the Construction Maintenance and Operation of a Living Classroom Building at Heron's Head Park and Related Transaction Documents.

DIRECTOR'S RECOMMENDATION: APPROVE GROUND LEASE AND RELATED AGREEMENTS

BACKGROUND

The Port constructed Heron's Head Park (HHP) on the formerly undeveloped Pier 98 in 1998 as part of settlement of a BCDC enforcement order. The park includes approximately 8 acres of wetland habitat, and 14 acres of upland open-space with trails, picnic area, interpretive signs, and a fishing pier.

Community participation has been an important part of Heron's Head Park since its inception and is a major contributor to the health and vitality of the park. Heron's Head Park offers a unique opportunity for local schools and other visitors to study and enjoy wetlands in their own backyard. The Port has sought to actively promote community involvement at the park and to help local schools take advantage of the hands-on educational experience that Heron's Head Park offers. To that end, the Port has worked with various entities to develop and conduct school and community participation programs at Heron's Head Park since 1998. The programs offer opportunities to a wide variety of ages and interests, from a short field trip for pre-schoolers from a nearby child development center, to a semester-long series of field trips by a local high school science class, to independent study of wetland ecology by City College students. The programs also include monthly community participation days on weekends to promote involvement of non-student park visitors.

THIS PRINT COVERS CALENDAR ITEM NO. 6A

Literacy for Environmental Justice (LEJ), a community-based non-profit organization dedicated to providing environmental education programs to schools and youth groups in the Bayview-Hunter's Point community, has conducted education and community/volunteer programs at Heron's Head Park under contract with the Port since 2001. These programs have brought thousands of youth and adults to study and appreciate one of the few remaining wetlands in the city and have contributed many thousands of hours of volunteer work to maintain the park and wetlands. LEJ is physically located in Bayview-Hunter's Point, has demonstrated commitment and experience in providing culturally relevant environmental education programs for urban youth, and offers a high degree of technical expertise. LEJ also draws youth directly from the community that Heron's Head Park is intended to serve to participate as employees, interns and student leaders.

In 2001, LEJ applied for and received a grant of \$898,000 from the City and County of San Francisco Department of the Environment (DOE) to construct the "Living Classroom" at Heron's Head Park. The Classroom will consist of a one-story, 1,425 square foot building with passive solar power. It will be certified as a LEED ("Leader in Energy and Environmental Design") structure, in accordance with the City's Green Building Ordinance. The "Living Classroom" will house LEJ's educational programs and will be available for certain other educational and community functions.

In January 2001, the Port Commission approved Resolution No. 01-02 supporting LEJ's grant application and authorizing Port staff to negotiate agreements with LEJ as needed to construct the Living Classroom. In October 2002, the Port Commission heard an informational progress report, including the presentation of the schematic design and the Port's role in project implementation.

Port staff has negotiated a ground lease with LEJ for the construction, and occupancy and maintenance of the Living Classroom. The ground lease and all related exhibits on file with the Port Commission Secretary, and the key terms and conditions are outlined below:

PROPOSED LEASE

1. Premises:

Approximately 2,292 sq. ft. of open land, which represents the footprint of the Living Classroom building to be constructed by LEJ and approximately 6,058 sq.ft. of open land under non-exclusive license for footpaths, landscaping and circulation around the building.

2. Use:

The construction and operation of a building consisting of approximately 1,450 square feet of indoor space including a classroom/meeting room, small office, two bathrooms, a storage room, and a small greenhouse. The facility will be used as the home base for environmental education programs and for related meetings or other purposes consistent with the park programs or other Port uses. LEJ must conduct the foregoing construction and permitted uses in accordance with the Final Supplemental Environmental Impact Report (SEIR) issued by the San Francisco Planning Department, Office of Environmental Review, File No. 1999.377E. Also, LEJ must make the building available for use by future grantees of Port funded educational programs.

3. **Term of Lease:**

The Lease becomes effective upon satisfaction of various conditions precedent, including Board of Supervisors approval and payment of certain fees and deposits by LEJ (see below). Upon Lease commencement and procurement of all requisite regulatory approvals, LEJ may begin construction of the Living Classroom but may not occupy it or commence "operations" at the building until the Jefferson-Martin 230kV Line Project has been completed by PG&E. The Lease has a term of ten years, commencing on the date of completion of the transmission line described above.

4. **Rent:**

Base Rent: Rental Rate of \$.20 per sq. ft. per month for open land, with annual cost of living increases.

Total Base Rent \$458.40 per month. \$5,500.80 annually.

5. **Security Deposit:** \$5,000.00

6. **Rent Credit for Foundation and Site Preparation:**

LEJ, at its sole cost and expense, must grade and prepare the leased site, and construct a foundation for the Living Classroom building. LEJ will receive a rent credit for the actual cost of such working upon submittal of requisite documentation in a sum not to exceed \$70,000.00.

7. **Improvements:**

LEJ will construct, at LEJ's sole cost and expense, a 1,450 square foot building and ancillary outdoor improvements, such as footpaths and landscaping.

8. **Maintenance and Repairs:**

Throughout the term of the Lease, LEJ shall maintain and repair, at LEJ's sole cost and expense, the Premises, and all public access improvements located on the Premises, except for Capital Improvements (described below).

9. **Capital Improvements:**

While the Lease is a triple net lease, Port agrees to perform certain capital improvements on the Premises during the Lease term to maintain quality control in such improvements. LEJ must pay Port, prior to Lease Commencement, \$48,000.00 as a "Capital Improvements Fee" to cover Port's anticipated costs. This Fee may be reasonably increased by the Port during the Lease term.

10. **Environmental:**

LEJ will be required to comply with applicable mitigation measures identified in the First Addendum to Final Negative Declaration, dated July 26, 2002, and Second Addendum to Final Negative Declaration, dated August 16, 2005, File No. 1997.432E, issued by the San Francisco Planning Department.

11. **Fee for Removal of Tenant Improvements:**

LEJ must pay a Removal Fee in the amount of \$15,000.00, prior to Lease Commencement, securing LEJ's obligation to remove all improvements on the Premises. This Fee is *not refundable*.

12. Materialman's Completion Bond:

LEJ shall furnish to Port a Materialman's Completion Bond, issued by a responsible surety company, satisfactory to Port in Port's reasonable discretion, licensed to do business in California, in an amount not less than the final construction contract bid. The Materialman's Completion Bond must remain in effect until the entire cost of proposed improvements have been paid in full and the new improvements have been insured as provided in the Lease.

13. Assignment and Subletting:

LEJ is not allowed to sublease the Premises, and LEJ may not assign the Premises without the Port's written consent. Additionally, LEJ must agree to assign the Lease to a party requested by the Port if an Event of Default occurs and the Port elects such a remedy. This provision is designed to ensure that the Living Classroom can be utilized for educational purposes by another qualified nonprofit if LEJ is unable to perform its Lease obligations. The California Coastal Conservancy will assist the Port in finding a qualified assignee. The assignment will not require subsequent Port Commission or Board of Supervisors approval as long as no material changes are made to the Lease.

SOUTHERN WATERFRONT ADVISORY COMMITTEE (SWAC)

SWAC reviewed and voted on proposed Lease between the Port and LEJ at its meeting on July 13, 2005. SWAC bylaws require a minimum 5 votes in favor to carry an item. At the meeting at which SWAC 8 members were present, 4 members voted in favor of the proposed transaction, 2 voted against, and 2 abstained from voting.

BOARD OF SUPERVISORS APPROVAL

Under Charter Section 2.110 and 9.118, leases having a term of ten years or more are subject to approval by the Board of Supervisors. The lease with LEJ for space at Heron's Head Park will require approval from the Board of Supervisors and will not become effective until such approval is granted.

CALIFORNIA STATE COASTAL CONSERVANCY

In October 2003, the California State Coastal Conservancy, consistent with its mission to promote public access to the coast, awarded a grant of \$400,000 to LEJ to support construction of the Living Classroom. The Public Resources Code authorizes the Coastal Conservancy to award grants and requires that the Coastal Conservancy execute agreements with grantees and property owners to protect the public interest in any improvements or developments funded by such grants. The agreement between the Coastal Conservancy, the Port and LEJ ensures that the Living Classroom will be maintained and operated in manner consistent with the intent of the grant, provides nondiscriminatory public access, and does not pose a hazard to public safety or property. A copy of the proposed Agreement is attached as an exhibit to the Ground Lease. The key terms are that the Living Classroom be used for environmental educational purposes for 20 years and that the conservancy has the right to find a replacement nonprofit to LEJ for the lease obligations in the event LEJ defaults and Port exercises its remedies.

STAFF RECOMMENDATION

Port staff recommends that the Commission authorize and direct the Executive Director to enter into the proposed Ground Lease in substantially the form on file with the Commission Secretary, as well as all related agreements, including the tri-party agreement with the Coastal Conservancy and LEJ.

Prepared by: Mark Lozovoy, Assistant Deputy Director, Real Estate
Carol Bach, Assistant Deputy Director, Environmental, Health and Safety
Bijal Patel, Deputy City Attorney

(REVISED 9/27/05)
PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

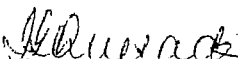
RESOLUTION NO. 05-64

- WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, Literacy for Environmental Justice ("LEJ") has proposed to develop a "living classroom" facility at Heron's Head Park, which is within the Port's jurisdiction; and
- WHEREAS, the proposed use of Heron's Head Park is consistent with the California Public Trust, the General Plan of the City and County of San Francisco, the San Francisco Planning Code, the Waterfront Land Use Plan and the BCDC Seaport Plan; and
- WHEREAS, the site for the LEJ Lease proposed at Heron's Head Park was analyzed in the First Addendum to Final Negative Declaration, dated July 26, 2002, and Second Addendum to Final Negative Declaration, dated August 16, 2005, File No. 1997.432E issued by the San Francisco Planning Department, Office of Environmental Review to assess any changes in environmental impacts from the proposed Lease; and
- WHEREAS, Port staff have negotiated a lease ("Lease") for the construction, maintenance, and operation of the proposed Living Classroom, a copy of which is on file with the Commission Secretary and the terms for which are outlined in the staff report for this Agenda item ("Staff Report"); and
- WHEREAS, as part of the transaction Port staff have also negotiated an agreement with the California Coastal Conservancy, a donor agency for the Living Classroom, in the form attached to the Lease; and
- WHEREAS, The Lease requires approval by the Board of Supervisors pursuant to Charter Section 9.11.8; and
- WHEREAS, Port staff recommends the Commission approve the Lease and related agreements on the terms and conditions set forth in the Staff Report; now, therefore, be it
- RESOLVED, that based on staff's recommendation and its own review and analysis, the Port Commission hereby approves the Lease and related agreements; and now, be it further

RESOLVED, that the Port Commission hereby authorizes and directs the Executive Director to forward the Lease to the Board of Supervisors for approval, pursuant to its authority under Charter Section 9.118 (c), and upon the effectiveness of such approval, to execute the Lease and related agreements; and now, be it further

RESOLVED, that the Commission authorized the Executive Director to execute and enter into any additional documents ~~including non-material modification to the Lease and related agreements, as she deems necessary or appropriate, in consultation with the City attorney,~~ to consummate the transactions contemplated hereby or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 27, 2005.



Secretary



MEMORANDUM

August 8, 2007

TO: MEMBERS, PORT COMMISSION
Hon. Ann Lazarus, President
Hon. Kimberly Brandon, Vice President
Hon. Rodney Fong
Hon. Michael Hardeman
Hon. Stephanie Shakofsky

FROM: Monique Moyer *M Moyer*
Executive Director

SUBJECT: Approval of Addendum to Lease No. 13816 with Literacy for Environmental Justice for the Construction, Maintenance and Operation of a Living Classroom Building at Heron's Head Park.

DIRECTOR'S RECOMMENDATION: Approve Resolution

BACKGROUND

In 1998, the Port constructed Heron's Head Park (HHP) on the formerly undeveloped Pier 98 as part of settlement of a Bay Conservation and Development Commission enforcement order. The park includes approximately eight acres of wetland habitat, and 14 acres of upland open-space with trails, picnic area, interpretive signs, and a fishing pier. Community participation has been an important part of Heron's Head Park since its inception. The Port has sought to actively promote community involvement at the park and to help schools, community members, and environmental organizations take advantage of the hands-on educational experience that Heron's Head Park offers. Literacy for Environmental Justice (LEJ), a community-based non-profit organization dedicated to providing environmental education programs to schools and youth groups in the Bayview-Hunters Point community, has conducted education and community/volunteer programs at Heron's Head Park under contract with the Port since 1999.

In 2001, LEJ applied for and received a grant of \$898,000 from the City and County of San Francisco Department of the Environment (DOE) to construct the "Living Classroom" at Heron's Head Park. In 2003, LEJ applied for and received an additional \$400,000 in grant funding from the California State Coastal Conservancy (CCC) to support construction of the Living Classroom. The Classroom will consist of a one-story, 1,425 square foot building with solar power and wastewater treatment. It will be certified as a LEED ("Leader in Energy and

This Print Covers Calendar Item No. 8E

Environmental Design”) structure. The “Living Classroom” will house the Heron’s Head Park programs and other environmental and health education programs, and will be available for certain other educational and community functions.

In January 2001, the Port Commission approved Resolution No. 01-02 supporting LEJ’s grant application and authorizing Port staff to negotiate agreements with LEJ as needed to construct the Living Classroom. In October 2002, the Port Commission heard an informational progress report, including the presentation of the schematic design and the Port’s role in project implementation. In 2005, the Port Commission approved Resolution No. 05-64 authorizing the lease with LEJ for construction and operation of the Living Classroom. Since 2005, LEJ has been working to complete its construction plans, resolve potential permitting issues associated with building design and construction, select and negotiate construction contracts with a general contractor and solar power installer, and secure all insurance and bonds required of the contractors and the tenant. To date, the Port has not executed the lease because LEJ has been unable to meet one of the conditions precedent to lease execution: the requirement to obtain a “Materialman’s Completion Bond”.

During the course of LEJ’s efforts to secure all of the required bonds and insurance, it was determined by LEJ and Port staff that the Materialman’s Completion Bond that LEJ is required by the lease to obtain is not commercially available for this project because LEJ is a small non-profit organization with limited assets or revenue. To address this problem, Port staff proposes to revise the commencement, insurance, and termination provisions of the lease, and the Work Letter (Exhibit G to the lease) as described below. These revisions are designed to mitigate the risks that the completion bond would cover and provide the Port with assurance that LEJ will have the resources to complete the project in accordance with the lease terms, or, in the event that LEJ does not have and cannot secure sufficient resources, the Port will have the right to terminate the lease and use the fees and deposits that the Port currently holds for any purpose, potentially including completion of the project, or removal of any partial construction and restoration of the site. The lease was previously approved by the Board of Supervisors and, upon Port Commission approval, the proposed addendum to Lease No. 13816 will be subject to Board of Supervisors approval.

PROPOSED REVISION TO TERMS OF LEASE NO. 13816

Commencement Date: Section 1.2 of the lease will be revised to make effectiveness of the lease conditioned upon receipt of performance bonds as described below.

Insurance: Section 18.1 of the lease will be revised to require that LEJ’s contractors will each obtain a payment (labor and materials) bond and performance bond in a form acceptable to Port and in an amount of at least (100%) of the value of the contract awarded to each contractor. These bonds will serve to ensure the Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work.

Termination: In the event that unforeseen conditions cause construction costs to exceed available funding, including the construction contingency, and LEJ is unable to secure the additional funding within 90 days, the Port has the right to terminate the lease. In such case, the Port would have the right to retain the \$68,000 in deposit and fees from LEJ.

Work Letter: The Work Letter (Exhibit G to the lease) will be revised to require that, LEJ, prior to beginning construction and at its sole expense, will hire a Third-Party Fund Administrator (TPA). The TPA will receive progress payments from LEJ's contractors, review them for consistency with each contractor's schedule of values, and forward approved payment requests to LEJ for submittal to DOE or CCC. The TPA will establish a disbursement account to which it will receive funds on LEJ's behalf from the DOE and CCC, and disburse funds to LEJ's contractors in accordance with approved payment requests. The TPA will notify the Port immediately of any lien, claim, suit or circumstance which could, in the opinion of the TPA, give rise to one, and reserve funds in the amount of any potential liability. Upon receipt of all documentation necessary to demonstrate completion of the work and final payment to LEJ's contractors, the TPA will release any remaining funds in accordance with the conditions of LEJ's funding agreements with the DOE and CCC.

Other New/Updated Lease Provisions: The lease amendment will include other updates to incorporate current standard lease provisions, including hazardous materials disclosure, sunshine ordinance, conflict of interest, drug-free workplace, use of public transit, food service waste reduction and Federal Emergency Management Agency disclosure.

RECOMMENDATION

Port staff recommends that the Commission authorize and direct the Executive Director to enter into the proposed amendment in substantially the form on file with the Commission Secretary, as well as all related agreements.

Prepared by: Mark Lozovoy, Assistant Deputy Director, Real Estate
Carol Bach, Environmental Affairs Manager, Planning & Development

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

RESOLUTION NO. 07-63

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

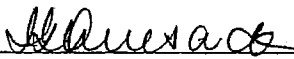
WHEREAS, The Port has approved Resolution No. 05-64 authorizing the lease with Literacy for Environmental Justice ("LEJ") for construction and operation of the Living Classroom; and

WHEREAS, the Port now desires to revise the lease to remove the requirement that LEJ obtain a "Materialman's Completion Bond", and add new requirements regarding commencement, termination, and use of a Third-Party Funds administrator; now therefore be it

RESOLVED, that the Port Commission hereby consents to revision of Lease No. 13816, the terms of which are described in the staff report and are on file with the Commission secretary; and be it further

RESOLVED, that the Executive Director or her designee is hereby authorized to execute all such appropriate documentation as she deems necessary or appropriate to implement this Resolution in a form approved by the City Attorney's office, such determination to be conclusively evidenced by the execution and delivery by the Executive Director, or her designee of any such document.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 14, 2007.


Secretary



MEMORANDUM

October 3, 2013

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

FROM: Monique Moyer *M Moyer*
Executive Director

SUBJECT: Request Approval of a Mutual Termination Agreement with Literacy for Environmental Justice, for Lease No. L-13816, for the EcoCenter at Heron's Head Park, located at Jennings Street and Cargo Way, subject to Board of Supervisors approval

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION

EXECUTIVE SUMMARY

Port staff is seeking authorization from the Port Commission to execute a Mutual Termination Agreement with Literacy for Environmental Justice ("LEJ"), a California corporation. LEJ has requested to terminate its Lease No. L-13816 ("Lease") prior to its specified termination date of December 6, 2017, subject to Board of Supervisors approval.

BACKGROUND

Heron's Head Park is a 22-acre open space owned and operated by the Port of San Francisco (the "Port") dedicated to wetland and wildlife habitat and passive recreation (see Exhibit A – Site Location). The EcoCenter is an approximately 2,300 square foot building within Heron's Head Park. It is comprised of a single open meeting room, adjacent wastewater treatment room, two restrooms, and two very small office and utility rooms.

LEJ, a non-profit organization in the Bayview-Hunters Point neighborhood, has leased the footprint of land beneath the EcoCenter and surrounding 6,058 square-foot non-

THIS PRINT COVERS CALENDAR ITEM NO. 7A

exclusive outdoor license area (see Exhibit B and B-1 – Site Plan for Lease No. L-13816) since 2007. The Lease and a subsequent addendum revising certain construction requirements were approved by Port Commission Resolution Nos. 05-64 and 07-63 and Board of Supervisors Resolution Nos. 60-06 and 553-07.

The Port and LEJ also entered into other agreements related to the Lease, including License No. 14831 for installation of a potable water supply line ("License"), an Agreement Protecting the Public Interest in Certain Improvements and Development dated July 16, 2008 with the Port and California State Coastal Conservancy, and a Letter Agreement Regarding Mayor's Office of Housing Division of Community Development Funding for Improvements at The EcoCenter at Heron's Head Park dated February 16, 2010 with the Port and the Mayor's Office of Housing, Division of Community Development.

LEJ secured funds, permits, licenses and approvals required for construction, and completed construction in 2010. Since opening the EcoCenter, LEJ has experienced financial and staffing setbacks and is unable to operate, maintain and program the facility. LEJ approached the Port seeking to terminate its Lease and License for the EcoCenter. Both parties desire to terminate the Lease and License so that the Port may seek a new tenant to operate the EcoCenter and achieve the public benefit originally intended.

Port staff requested and received Port Commission authorization on September 24, 2013 to issue a Request for Proposals seeking qualified entities to lease the EcoCenter, contingent upon termination of the subject Lease and License. The proposal solicitation process is underway.

MUTUAL TERMINATION AGREEMENT

The Mutual Termination Agreement transfers ownership of the EcoCenter building and all site improvements to the Port. The Port retains the Security Deposit, Capital Improvement Fee, and Removal Fee, a total of \$68,000. LEJ agrees to cooperate with the Port and third party funders in any matter relating to the termination. The Mutual Termination Agreement will also specify that each party will release the other from obligations and liability related to the Lease, License or related agreements, except for LEJ's indemnification obligations and any other obligation that expressly survive termination.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing staff to execute a Mutual Termination Agreement between the Port of San Francisco and Literacy for Environmental Justice, subject to approval by the Board of Supervisors of the City and County of San Francisco under Charter section 9.118.

**Prepared by: Carol Bach, Environmental & Regulatory Affairs Manager
Planning & Development Division**

**Jeff Bauer, Senior Leasing Manager
Real Estate Division**

**For: Byron Rhett, Deputy Director
Planning & Development Division**

**Susan Reynolds, Deputy Director
Real Estate Division**

**Exhibit A: Site Location, The EcoCenter at Heron's Head Park
Exhibit B: Site Plan for Lease L--13816**

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

RESOLUTION NO. 13-39

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control lands within Port jurisdiction; and
- WHEREAS, Port tenant, Literacy for Environmental Justice (LEJ), seeks termination of its Lease No. L-13816 for the 2,292 square-foot building located within the Port's Heron's Head Park, known as "the EcoCenter at Heron's Head Park" (the "EcoCenter") and the surrounding 6,058 non-exclusive license area, and License No. 14831 for installation of a potable water supply line to the EcoCenter; and
- WHEREAS, Both the Port and LEJ desire to terminate the Lease and License to enable the Port to lease the EcoCenter to a new tenant; and
- WHEREAS, Port staff has requested Port Commission authorization to execute a Mutual Termination Agreement with LEJ under which the Port would assume ownership of the EcoCenter and retain related deposits and fees and the parties would obtain a mutual release of claims, except for LEJ's indemnification obligations and any other provisions of the lease that expressly survive termination; now, therefore, be it
- RESOLVED, That the Port Commission authorizes staff to execute a Mutual Termination Agreement with LEJ in accordance with the terms set forth in this Memorandum to the Port Commission dated September 27, 2013 and substantially in the form on file with the Commission Secretary, and to seek final approval of the City and County of San Francisco Board of Supervisors in accordance with Charter section 9.118.

I hereby certify that the Port Commission at its meeting of October 8, 2013 adopted the foregoing Resolution.

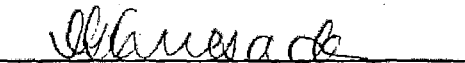

Secretary

Exhibit A. Site Location, The EcoCenter at Heron's Head Park



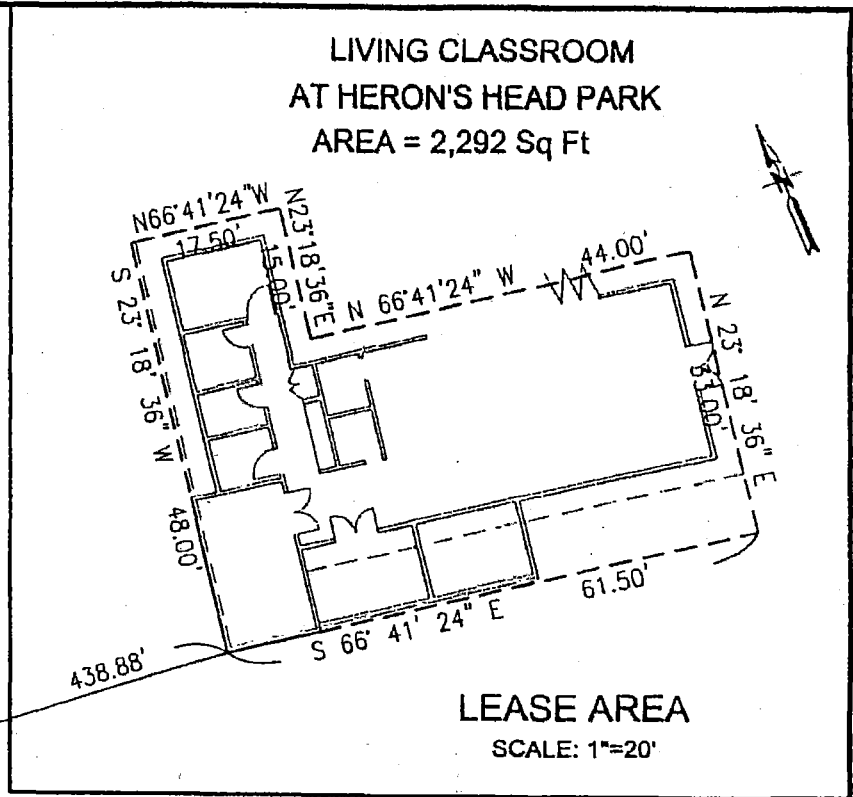
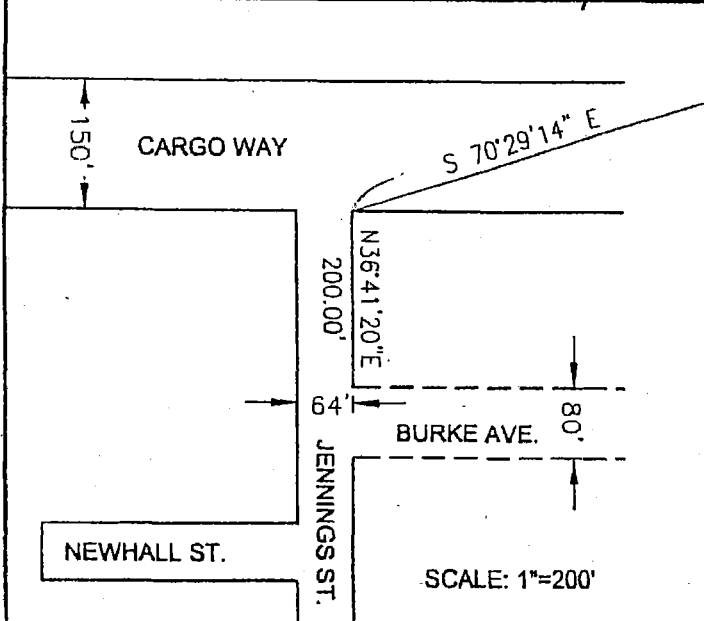
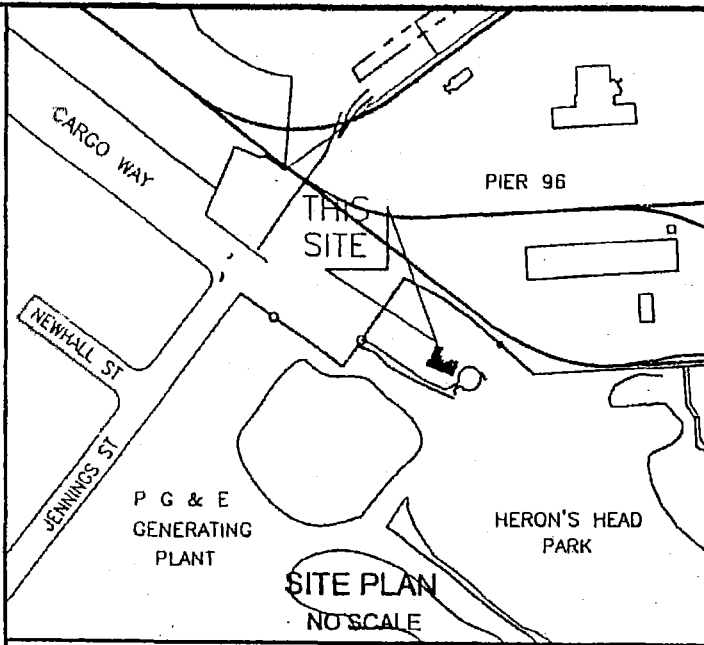
1222

INITIALS: PORT:

TENANT:

DATE:

EXHIBIT B



LEASE NO.

L-13816



SAN FRANCISCO PORT COMMISSION
 PORT OF SAN FRANCISCO
 DEPARTMENT OF ENGINEERING

TENANT

LITERACY FOR
 ENVIRONMENTAL JUSTICE

DRAWN BY: ECC, AMH

DATE: JULY 07, 2005

CHECKED BY: M. LOZOVYD

SCALE: AS SHOWN

PLACE CODE NO.

1980-00

SHEET NO. 1

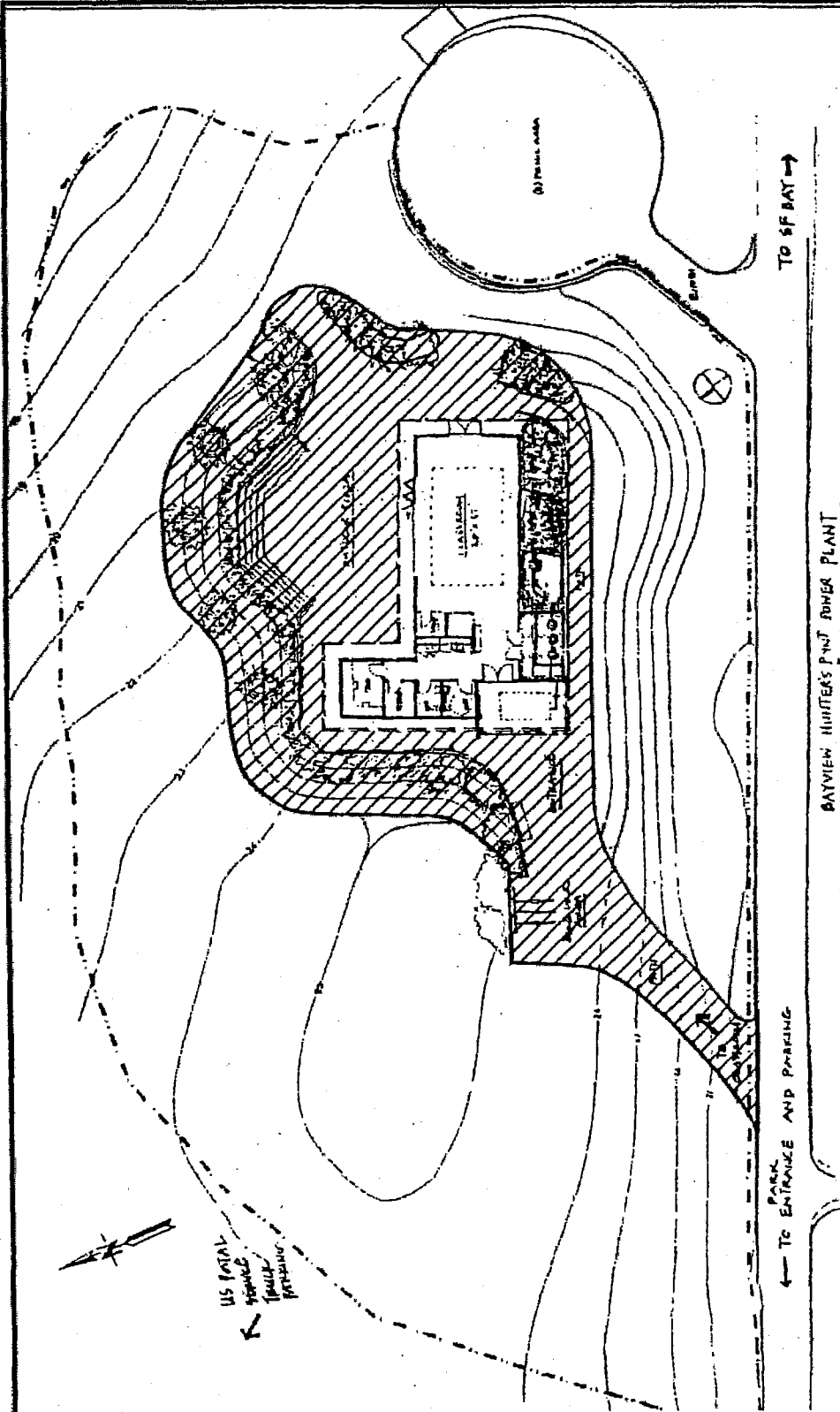
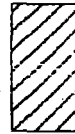


EXHIBIT B-1

INITIALS: PORT: _____ TENANT: _____ DATE: _____

NON-EXCLUSIVE LICENSE
 AREA ≈ 6,058 SQ. FT.
 (NOT INCLUDING FLOOR PLAN AREA)



SCALE: 1" = 30'

LEASE NO L-13816	 SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	TENANT LITERACY FOR ENVIRONMENTAL JUSTICE	DRAWN BY: ECC, AMN CHECKED BY: M. LOZOVY PLACE CODE NO. 1980-00	DATE: JULY 07, 2005 SCALE: AS SHOWN SHEET NO. 2 OF 2 SHEETS
		DAYVIEW HUNTERS POINT POWER PLANT PARK TO ENTRANCE AND PARKING TO SF BAY		

**MUTUAL TERMINATION AGREEMENT
(LEASE L-13816 AND RELATED AGREEMENTS)**

This Mutual Termination Agreement (this "**Agreement**"), dated for reference purposes only as of [Insert Board of Supervisors approval date] is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating through the SAN FRANCISCO PORT COMMISSION ("**Port**"), as landlord, and Literacy for Environmental Justice, a California corporation, as tenant ("**Tenant**").

RECITALS

A. Port and Tenant entered into Port Lease No. L-13816 dated as of September 27, 2005 for reference purposes only, as revised by an Addendum to the Lease (together, the "**Lease**"), for that certain real property located at Heron's Head Park as more particularly described in the Lease (the "**Premises**") for a 10-year term ending on December 6, 2017. The Lease and Addendum were approved by Port Commission Resolution Nos. 05-64 and 07-63 and Board of Supervisors Resolution Nos. 60-06 and 553-07. Port and Tenant have entered into other agreements regarding the use of the Premises, including License No. 14831 for installation of a potable water supply line (the "**License**") and an Agreement Protecting the Public Interest in Certain Improvements and Development dated July 16, 2008 with the Port and California State Coastal Conservancy ("**SCC**") and a Letter Agreement Regarding Mayor's Office of Housing Division of Community Development Funding for Improvements at The EcoCenter at Heron's Head Park dated February 16, 2010 with the Port and the Mayor's Office of Housing, Division of Community Development ("**MOCD**") (the other agreements collectively, the "**Related Agreements**").

B. Tenant secured funding from the City and County of San Francisco Department of the Environment, the SCC, the MOCD, and other public and private sources to construct a green building demonstration project and environmental education center at Heron's Head Park. In accordance with the Lease, the License, and the Related Agreements, Tenant constructed improvements on the Premises, including site preparation and grading, and construction of an approximately 2,292 square foot building comprised of a large general assembly room, two bathrooms, two small office/storage rooms, and an indoor wastewater treatment system.

C. Port and Tenant now desire to terminate the Lease and the License. The parties are making this change so that the Port may seek a successor building operator to operate the EcoCenter and achieve the public benefit originally intended. As material consideration for this Agreement, each party will release the other party from all obligations and potential liabilities under or related to the Lease, including the related agreements, except for any obligations that expressly survive the Lease and the License and Tenant's indemnification obligations under this Agreement.

D. Tenant is in good standing.

E. All capitalized terms used in this Agreement but not otherwise defined shall have the meaning given to them in the Lease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby mutually 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. **Lease Termination and Surrender.** Tenant shall surrender the Premises and all Improvements and Alterations thereon in compliance with Section 34 (Surrender and Quitclaim) of the Lease no later than 30 days after execution of this Agreement by Port ("**Termination Date**"). Port will

provide Tenant with 30 days advance written notice of the Termination Date, together with a fully executed counterpart of this Agreement, and Port and Tenant will conduct a joint exit inspection of the Premises to ensure proper surrender prior to the Termination Date.

3. Security Deposit, Capital Improvements Fee and Removal Fee. As a material part of the consideration for this Agreement, Tenant shall forfeit to Port the Security Deposit, Capital Improvements Fee and Removal Fee for the Lease. Port shall retain all such monies free of any claim by Tenant.

4. Continuing Rights and Obligations. From and after the Termination Date, neither Port nor Tenant shall have any rights or obligations to each other under the Lease or the License except for obligations that expressly survive termination or as set forth in this Agreement. Tenant acknowledges and agrees that Port may immediately lease the Premises to a new tenant or tenants in its sole discretion.

5. Tenant's Obligations.

5.1 Tenant shall, at its sole cost and expense, cooperate fully with Port in any matter that involves the termination of the Lease and the License, such as obligations under the Related Agreements, surrender of the Premises, provision of documents and reports, appearances before decision-making bodies and the like.

5.2 Tenant acknowledges that it received funding for construction of the EcoCenter and the activities conducted under the Lease, the License, and the Related Agreements from various third party funders, including but not limited to those listed in Recital B. With respect to such third party funders, Tenant shall, at its sole cost, fully cooperate with all efforts by the SCC, MOCD, and Port to identify a new tenant for the Premises under the Related Agreements.

5.3 Tenant shall indemnify, protect, defend, and hold harmless forever ("**Indemnify**" or "**Indemnification**") Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and, if requested, shall defend them, without cost to the Indemnified Parties, against any and all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief direct or vicarious liability, damage, injury or loss ("**Claims**") directly or indirectly by any third party arising out of the Lease, License, the Related Agreements, or this Agreement regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Agreement 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 Agreement. The Indemnification obligations of Tenant set forth in this Agreement include all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Agreement shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Agreement, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such Claim is tendered to Tenant by the Indemnified Parties and shall continue at all times thereafter until resolved.

6. Tenant's Waiver. As a material part of the consideration for this Agreement, Tenant, on behalf of itself and its Agents, hereby fully and irrevocably releases, discharges, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, Port, or any and all of Port's Agents with respect to any and all Claims of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the Lease, the License, the Related Agreements, or this Agreement. Tenant acknowledges that the parties are entering into this Agreement at its request, that it is not being displaced from the Premises by any action of Port and, therefore, that Tenant is not entitled to relocation benefits under any statute or law providing for relocation benefits and waives any claims for relocation benefits in relation to the Lease and the License.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to the Claims released in this Agreement, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASE MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE RELEASE AT THE TIME THIS AGREEMENT WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Initials: WB PMR

Tenant

7. No Representation or Warranty by Port. Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

8. Entire Agreement. This Agreement contains all of the representations and 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 the 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.

9. 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, the License, or the Related Agreements, the terms of this Agreement shall prevail. Time is of the essence of this

Agreement. This Agreement shall be governed by the laws of the State of California. 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.

10. Effective Date. The Effective Date of this Agreement is the date of Port's execution as indicated below.

[SIGNATURES ON FOLLOWING PAGE]

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

By: _____

Susan Reynolds
Deputy Director, Real Estate

Dated: _____

TENANT: Literary for Environmental Justice, a California corporation

By: _____

By: _____

Its: EXECUTIVE DIRECTOR

Its: BOARD MEMBER

Dated: 10/6/2013

Dated: 10/8/13

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____

Rona H. Sandler
Deputy City Attorney

Agreement Prepared By: Carol Bach, Environmental & Regulatory Affairs Manager,
Planning & Development Division CB (Initial) and

Jeff Bauer, Senior Leasing Manager,
Real Estate Division JB (Initial)

Port Commission Resolution No. _____

Board of Supervisors Resolution No. _____