

EXHIBIT C

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Property at 1620, 1650 and 1680 Davidson Avenue

**PUBLIC TRUST EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR
1620-1650-1680 DAVIDSON AVENUE**

This PUBLIC TRUST EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR 1620-1650-1680 DAVIDSON AVENUE (“**Agreement**”) is dated for reference as of _____, 2022. The parties to the Agreement are the STATE OF CALIFORNIA (“**State**”), acting by and through the STATE LANDS COMMISSION (“**Commission**”); the CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation (“**City**”) acting by and through the SAN FRANCISCO PORT COMMISSION (“**Port**”), as a trustee under Chapter 1333 of the Statutes of 1968 (as amended, “**Burton Act**”); and Murray G. Cole and Doris M. Cole, Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 (collectively, “**Cole Trust**”). The Commission, City/Port and Cole Trust are each a “**Party**” and are referred to together as the “**Parties.**” This Agreement is entered into pursuant to Sections 6107, 6216 and 6307 of the California Public Resources Code and the Kapiloff Land Bank Act (Pub. Resources Code section 8600 et seq.).

RECITALS

A. Cole Trust claims ownership of approximately 1.31 acres of land commonly known as 1680 Davidson Avenue (Assessors Block 5215, Lot 021) (“**1680 Davidson**”), approximately 1.15 acres of adjoining land commonly known as 1650 Davidson Avenue Custer Avenue Exchange Agreement

(Assessors Block 5215, Lot 022) (“**1650 Davidson**”), and approximately 0.16 acres of adjoining land commonly known as 1620 Davidson (Assessors Block 5215, Lot 017) (“**1620 Davidson**”) and, for convenience, together with 1650 Davidson and 1680 Davidson, the “**Cole Property**”), as more particularly described in **Exhibit A** (Legal Description and Illustrative Plat of Cole Property) attached hereto. The Cole Property, which is adjacent to Islais Creek, includes that portion of former Custer Avenue, a so-called paper street, that lies generally between the eastern property line of 1650 Davidson and Islais Creek to the west, as shown in **Exhibit A** (“**Former Custer Avenue**”).

B. The ownership of Former Custer Avenue is disputed. Former Custer Avenue consists of former tide and submerged lands (collectively “**tidelands**”) that have been filled and reclaimed. The Commission and the Port assert that City holds an ownership interest in Former Custer Avenue under the common law public trust for navigation, commerce and fisheries (“**Public Trust**”) and the Burton Act and implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco (the “**Transfer Agreement**”), a copy of which was recorded January 30, 1969, as Instrument No. R40413 in Book B 308, Page 686 in the official records of the City and County of San Francisco (“**Official Records**”) (the Burton Act Trust together with the Public Trust, the “**Trust**”). Former Custer Avenue is described in the Official Records in document number Y88210 recorded on May 14, 1976, in Book C169, Pages 573 through 664 and is shown as a portion of Parcel “M” on page 70 on the Map of Lands Transferred in Trust to the City and County of San Francisco, recorded in the Official Records on May 14, 1976, in Book W of Maps at Pages 66 through 72. The Cole Trust disputes the City’s ownership and Trust status of Former Custer Avenue, and claims ownership of Former Custer Avenue, free of the Trust, originating from a 1917 deed from the City. The Parties wish to settle their claims pursuant to the exchange contemplated by this Agreement.

C. The circumstances giving rise to the trust and title uncertainty include the following:

1. Upon its admission to the United States of America on September 9, 1850, the State of California, by virtue of its sovereignty, received in trust for the people of the State of California all right, title, and interest in the tidelands within its boundaries up to the ordinary high-water mark, subject to the public trust. The Cole Property comprises lands that were tidelands at statehood, subject to the Public Trust.

2. Chapter 543 of the Statutes of 1868 (“**1868 Act**”) authorized the Board of Tide Land Commissioners (“**BTLC**”) to auction into private ownership State-owned tidelands, including portions of the Cole Property, but reserving to the State certain mapped streets (“**paper streets**”) and other areas reserved for public purposes. The lands subject to the 1868 Act were surveyed and shown on the Map of Salt Marsh and Tidelands (South of Second Street) prepared by George Allardt, completed in January 1869. The Cole Property is shown on the Allardt Survey as portions of Block 51 and Block 53, and portions of Third Avenue (later renamed Custer Avenue) which separated Block 51 and Block 53. The BTLC sold Blocks 51 and 53 by auction in the late 1860s and early 1870s. Subsequent to these sales, the Cole Property was filled, resulting in the current physical configuration of the parcels.

3. Custer Avenue appears as a public street on the official City map known as the “Humphreys Map,” which was authorized and approved by the City pursuant to Order 966 in October 1870. This map shows Former Custer Avenue (referred to as “3rd Avenue”) in the location described above (its present location). By an act dated April 1, 1872 (Stats. 1871-72, Ch. 562) (“**1872 Act**”), the State legislature expressly recognized and approved the Humphreys Map and declared that all streets, lanes, alleys, and other public places delineated upon that map were dedicated and declared to be open public streets, lanes, alleys and other public places (Article IV, Sections 1 and 2).

4. By Chapter 690, Stats. of 1911 (the “**1911 Act**”), the State legislature authorized any city or city and county, following the proper closing of any public street and opening of a new street in lieu of those so closed, to convey by deed its interest in the street so closed to the adjacent landowner in such manner as the local governing body deemed equitable. The 1911 Act does not address the Public Trust.

5. In 1917, by Resolution No. 14166, the City closed and abandoned the portion of Custer Avenue on the Cole Property as a public street. The City purported to convey Former Custer Avenue to Joseph Coryell by an indenture recorded on April 17, 1917. Mr. Coryell conveyed to the City an approximately 14-foot-wide strip of Block 51 and other property adjacent to Islais Creek by an indenture recorded on April 17, 1917, which land would expand the width of an existing paper street identified on the Humphreys Map as Islais Street.

6. As shown in subsequent assessor maps, the Cole Property was the subject of various lot mergers and subdivisions, including a purported merger with former Custer Avenue, resulting in the current legal configuration of the parcels known as 1620 Davidson, 1650 Davidson, and 1680 Davidson. The deed that conveyed 1650 Davidson to Cole Trust (or its predecessor) on April 18, 1979 purported to include portions of Former Custer Avenue. The deed that conveyed 1680 Davidson to Cole Trust (or its predecessor) on February 9, 1968, also purported to include portions of Former Custer Avenue. The property at the 1620 Davidson address does not include any portion of Former Custer Avenue.

7. In 1969, the State granted certain of its sovereign and other property interests within San Francisco to the City pursuant to the Burton Act and the Transfer Agreement, to be held by the Port subject to the Public Trust and the terms and conditions of the Burton Act and Transfer Agreement.

D. The historic conveyances of the State’s tidelands into private ownership, the reclamation of those lands, the 1911 Act, and the various actions in 1911 and 1917 have created substantial uncertainty as to the present configuration of Trust lands within the Cole Property, and have given rise to a bona fide dispute among the Parties as to the ownership and Trust status of Former Custer Avenue, the resolution of which would require extensive land title litigation at great expense.

E. California Public Resources Code Section 6307 (“**PRC 6307**”) authorizes the Commission to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these

lands, that are subject to the Public Trust, for other lands or interests in lands, if the Commission finds that all of the following conditions required thereunder are met: (1) the exchange is for one or more of the purposes listed in PRC 6307 subdivision (c); (2) the lands or interests in lands to be acquired in the exchange will provide a significant benefit to the Public Trust; (3) the exchange does not substantially interfere with public rights of navigation and fishing; (4) the monetary value of the lands or interests in lands received by the Public Trust in exchange is equal to or greater than that of the lands or interests in lands given by the Public Trust in exchange; (5) the lands or interest in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for Public Trust purposes; and (6) the exchange is in the best interests of the State. The Kapiloff Land Bank Act modifies PRC 6307 by allowing the consideration passing to the State in title settlements to consist, in whole or in part, of monetary payments into the Kapiloff Land Bank Fund, to be used to purchase lands or interests in lands that will benefit the Public Trust.

F. By settlement agreement dated May 25, 2021, the Port and the 2006 Murray G. And Doris M. Cole Revocable Trust agreed to resolve their dispute regarding title to Former Custer Avenue by, among other things, setting forth their intention to facilitate a sale or other resolution to enable the Cole Trust to hold clear fee title to Former Custer Avenue (“**Initial Settlement Agreement**”) as more fully described in the Initial Settlement Agreement. The parties to the Initial Settlement Agreement now intend to finally resolve their dispute concerning their respective rights, title and interest in and to the Former Custer Avenue under a final settlement agreement (“**Final Settlement Agreement**”), which requires among other things:

1. a sale agreement (“**Sale Agreement**”) under which the City will sell approximately 2,364 square feet of Former Custer Avenue, as more particularly described in **Exhibit B** (Legal Description and Illustrative Plat of SB 815 Parcel) to the Cole Trust, free of the Trust, pursuant to its authority under California Statutes of 2007, Chapter 660 (“**SB 815**”) Sections (1)(p)(3) and (8) (the “**SB 815 Parcel**”), subject to the terms and conditions of the Sale Agreement (including requisite findings by the Commission), which transaction will include sequential conveyances to and from the State prior to conveyance to the Cole Trust in accordance with Section 8(d) of SB 815, and which closing shall proceed in concert with closing of the transactions contemplated by this Agreement; and

2. this Agreement, which authorizes an exchange of lands pursuant to PRC 6307 and under which the following will occur: (i) City will quitclaim to the Commission its Burton Act Trust interest in the Cole Property; (ii) the Cole Trust will pay Seven Hundred Ninety Thousand Dollars (\$790,000.00) to the Commission, acting as trustee for the Kapiloff Land Bank Fund, pursuant to Public Resources Code Section 8625(a) (“**Kapiloff Deposit**”); (iii) the Commission will convey by patent its interest in the SB 815 Parcel to the City and City will sell the SB 815 Parcel to the Cole Trust pursuant to the Sale Agreement; (iv) the Cole Trust will convey a public trust easement (“**Public Trust Easement**”) over an eighteen foot (18’) wide strip of land lying within the Cole Property immediately adjacent to the northerly property line of 1650 and 1680 Davidson Avenue (“**Public Trust Easement Lands**”); and (v) the Commission will convey by patent to the Cole Trust all of the State’s right, title and

interest in the Cole Property free of the Trust, but reserving the Public Trust Easement in the Public Trust Easement Lands for navigation, commerce, and fisheries.

G. The Cole Trust is in contract to sell the Cole Property to 1620-1680 Davidson LLC, a Delaware limited liability company (subject to the Public Trust Easement referenced above) (the “**Cole Trust Sale Agreement**”). The Cole Trust desires to coordinate same day closings such that the sale of the Cole Property will take place immediately following the Closing hereunder and the closing under the Sale Agreement. The City and Commission have no objection; provided however, that the obligations and transactions under this Agreement, the Sale Agreement, and the Final Settlement Agreement are separately binding on the Parties and are not conditioned on consummation of the Cole Trust Sale Agreement.

H. Following the transactions described above, the Port and the Commission will cooperate to seek legislation granting to the City the rights to the Public Trust Easement Lands, to be held subject to the Trust.

I. The land exchange and title settlement described in this Agreement is needed to resolve the Parties’ bona fide disputes as to the title and trust status of Former Custer Avenue, and to resolve uncertainties regarding the Trust as to the Cole Property. As proposed, the exchange will confirm or impress a Trust easement on shoreline-adjacent land having the greatest value to the Trust, which may allow for future public access to and along Islais Creek that might otherwise be unavailable, and the exchange will terminate any Trust interest in the landward portions of the Cole Property that have been filled and reclaimed, are cut off from access to the waterfront, and that are relatively useless to the Trust, thereby making development of those areas economically feasible. In approving this Agreement, the Commission has made the findings required under PRC 6307.

J. The Parties have conducted independent studies and evaluations of the title evidence, applicable principles of law, and the merits of their legal positions. The Commission has reviewed an appraisal and other information prepared to analyze the monetary value of the Cole Property and the Public Trust Easement Lands and has reached an independent conclusion regarding the value of these properties.

K. Along with closing of the Sale Agreement of the SB 815 Parcel as described in Recital F, the land title transfers provided for in this Agreement will be effectuated through recorded conveyances, subject to the conveyance ordering, conditions of closing, and other terms and conditions of this Agreement.

L. The San Francisco Port Commission approved this agreement by Resolution [xx-xxx] adopted on [_____] (the “**Port Commission Resolution**”). The San Francisco Board of Supervisors, by Resolution [xx-xxx] adopted on [_____], and signed by the Mayor on [Date], approved this Agreement and authorized the Port and the City’s Director of Real Estate to enter into this Agreement on behalf of the City (the “**Board of Supervisor’s Approval**”).

M. The Commission approved this Agreement by Staff Report No. [__] at its meeting of [_____].

AGREEMENT

In consideration of the foregoing recitals and the following conveyances and terms, the Parties hereby agree as follows:

1. Conveyances to Effectuate Exchange. Subject to the conditions of closing and other terms and conditions of the Sale Agreement with respect to the SB 815 Parcel only and this Agreement, the Parties shall make the following conveyances of property to be recorded and effective in the following order:

a. City Quitclaim to State. City shall convey, remise, release, and forever quitclaim to the Commission all of City's Burton Act Trust interest in the Cole Property. The conveyance shall be by Quitclaim Deed in the form of Exhibit C (Form of City Quitclaim Deed).

b. Cole Trust Kapiloff Deposit. The Cole Trust shall pay, or cause to be paid, the Kapiloff Deposit to the Commission, acting as trustee for the Kapiloff Land Bank Fund, pursuant to Public Resources Code Section 8625(a). The Kapiloff Deposit shall be non-refundable. The Commission intends to expend the Kapiloff Deposit to acquire new property interests in tide and submerged lands, lands that were or may be converted to wetlands, or adjoining or nearby lands where the public use and ownership is necessary or beneficial to facilitate public trust purposes within the City, but its obligation to do so shall be non-binding. The Commission agrees to consider timely and in good faith the acquisition of any such potential suitable property interests identified and proposed by Port for an amount up to the Kapiloff Deposit; provided that the acquisition price is not greater than the fair market value of any such property interest.

c. State Patent to City. The Commission shall convey, remise, release, and forever quitclaim to City all of the State's right, title, and interest (including any right, title, and interest existing by virtue of its sovereignty but excluding mineral rights) in the SB 815 Parcel, provided that all conditions of closing as described separately in the Sale Agreement have been met. The conveyance shall be by Patent in the form of Exhibit D (Form of SB 815 Patent).

d. City Quitclaim of the SB 815 Parcel to the Cole Trust. The City will quitclaim the SB 815 Parcel to the Cole Trust pursuant to the Sale Agreement.

e. Cole Trust Conveyance of Trust Easement to State. The Cole Trust shall convey to the State an easement for Public Trust purposes over the Public Trust Easement Lands as further described in Exhibit E (Legal Description and Illustrative Plat of Public Trust Easement Lands). The conveyance shall be by an easement grant deed in the form of Exhibit F (Form of Trust Easement Grant Deed).

f. State Patent to Cole Trust. Upon accepting the City Quitclaim Deed, Kapiloff Deposit, and Trust Easement Grant Deed, the Commission shall convey, remise, release, and forever quitclaim to the Cole Trust all of the State's right, title, and interest (including any right, title, and interest existing by virtue of its sovereignty) in the Cole Property,

and shall specifically release and terminate the Trust except as to the Public Trust Easement Lands. The State shall reserve the Public Trust Easement in the Public Trust Easement Lands. The conveyance shall be by Patent in the form of **Exhibit G** (Form of Trust Termination Patent).

2. Legislative Grant of Public Trust Easement to City. As a separate obligation of Port and the Commission, Port and the Commission agree to promptly seek legislation granting the Public Trust Easement to the Port, subject to the Trust.

3. Commission Findings. The Commission, effective upon recordation of this Agreement, makes the following findings pursuant to PRC 6307 and the Kapiloff Land Bank Act and to comply with Article X section 3 of the California Constitution:

a. The exchange is for the purposes of resolving the title dispute, enhancing public access to or along the water, and enhancing waterfront and nearshore development or redevelopment for public trust purposes.

b. The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the Trust and the Kapiloff Deposit will be used to acquire lands or interests in land where the public use and ownership of the land is necessary or extremely beneficial for furtherance of Public Trust purposes.

c. The exchange does not substantially interfere with public rights of navigation and fishing.

d. The monetary value of the Public Trust Easement together with the Kapiloff Deposit is equal to or greater than the appraised fair market value of the lands or interests in lands given by the Trust in exchange.

e. The Cole Property, other than the Public Trust Easement Lands, is cut off from water access and no longer is in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and ~~are~~is relatively useless for Trust purposes.

f. The exchange is in the best interests of the State.

4. Conveyance Order; Escrow; Closing.

a. Conveyance Order.

(1) The conveyances listed in Section 1 above shall be effected in the order described in Section 1 as a single Closing as described in this Section 4.

(2) Each conveyance in the Closing described in Section 1 above shall be recorded in the Official Records sequentially and on the same day and in the sequence in which they appear in Section 1.

b. Escrow; Closing. The Closing shall be consummated through an escrow account (“**Escrow**”) opened through the offices of First American Title Insurance Company,

4750 Willow Road, Suite 275, Pleasanton, CA 94588, Attn: Jules Fulop (“**Title Company**”). Upon approval of this Agreement by the Commission, but no later than one hundred twenty (120) days after the date the Governor executes the Trust Termination Patent, the Parties shall establish escrow with the Title Company and prepare joint escrow instructions conforming to the requirements of this Agreement, the Sale Agreement, the Final Settlement Agreement and with any other supplemental instructions necessary to effectuate the intent of this Agreement as may be agreed to in writing by the Parties (the "**Joint Escrow Instructions**") and shall execute and deliver the Joint Escrow Instructions to the Title Company no less than ten (10) days prior to the Target Date. The Joint Instructions shall specify that the Escrow will close concurrently with the separate escrows for the Cole Trust Sale Agreement, and the purchase price funded for the Cole Trust Sale Agreement may be used to fund the Kapiloff Deposit if all closing conditions have been met for the Cole Trust Sale Agreement. Notwithstanding the foregoing, the obligations and transactions in this Agreement, the Sale Agreement and the Final Settlement Agreement are not conditioned on consummation of the Cole Trust Sale Agreement and the transactions contemplated by this Agreement, the Sale Agreement and the Final Settlement Agreement are independent of the transactions contemplated under the Cole Trust Sale Agreement.

“**Closing**” or “**Closing Date**” shall mean the date that the conveyances described in Section 1 above are recorded in the Official Records. The Closing Date under this Agreement shall occur on the same date as the closing under the Sale Agreement. The Closing Date shall occur no later than July 13, 2023 (the “**Outside Date**”) unless further extended by mutual written agreement of the Parties, but the Parties will use their best efforts to close no later than December 31, 2022 (the “**Target Date**”).

5. Conditions Precedent to Closing.

a. Sale Agreement. It is a condition precedent to each Party’s obligation to close escrow for the conveyance or acceptance of real property under this Agreement that the City and Cole Trust have taken all actions and deposited into escrow all documents and funds necessary to effect the transaction described in the Sale Agreement as evidenced by written notice by the Title Company.

b. Commission’s Closing Conditions. As a condition precedent to the Commission’s obligation to close escrow, the Executive Officer shall have approved:

i. the condition of title and the form of a CLTA title insurance policy to be issued by the Title Company, in the amount of coverage reasonably requested, for the Public Trust Easement Lands; and

ii. the physical condition of the Public Trust Easement Lands.

c. City’s and Port’s Closing Conditions. As a condition precedent to City’s and Port’s obligation to close escrow, the City shall have approved:

i. the condition of title; and

ii. the physical condition of the Public Trust Easement Lands.

d. Cole Trust's Closing Conditions. As a condition precedent to the Cole Trust's obligation to close escrow, Title Company shall have given pro forma title commitments to issue an ALTA title insurance policy for the Cole Property to the Cole Trust or its designee, which policy includes no exceptions for the Trust (other than as to the Public Trust Easement Lands), or includes an endorsement that any such exceptions shall be removed upon final non-appealable judgment in a quiet title or validation action (including without limitation the actions described in Section 8 herein), in an action to establish title under the Destroyed Land Records Relief Law (Code of Civil Procedure section 751.01 et seq.), or both.

6. Deposits into Escrow.

a. Commission Deposits. At least two (2) business days prior to Closing, the Commission shall deposit the following documents into Escrow:

i. A certified copy of the Minute Item for Staff Report No. [___], of the Commission's public hearing on [_____], showing the Commission's approval of this Agreement and the amount of funds to be deposited in the Kapiloff Fund.

ii. The Executive Officer's written approval of (A) the condition of title to the Public Trust Easement Lands, (B) a pro forma title commitment for the Trust Easement in coverage amounts acceptable to the Executive Officer, (C) the form of title insurance to be issued, and (D) the physical condition of the Public Trust Easement Lands.

iii. This Agreement, duly signed and attested.

iv. A duly signed and attested patent for the SB 815 Parcel in the form of **Exhibit D**, quitclaiming to the City all of its right, title and interest in the SB 815 Parcel, free of the Trust (with the exception of mineral rights).

v. A duly signed and attested Trust Termination Patent in the form of **Exhibit G**, quitclaiming to the Cole Trust the Cole Property, free of the Trust (except as to the Public Trust Easement Lands) and reserving the Trust Easement in the Public Trust Easement Lands.

b. City and Port Deposits. At least two (2) business days prior to Closing, the City and Port shall deposit the following documents into Escrow:

i. Certified copies of the Board of Supervisors' Approval and Port Commission Resolution, each authorizing entry into this Agreement.

ii. A duly signed and acknowledged quitclaim deed from City in the form of **Exhibit C**, quitclaiming to the Commission all of City's Burton Act Trust interest in the Cole Property.

c. Cole Trust Deposits. At least two (2) business days prior to Closing, Cole Trust shall deposit the following into Escrow:

- i. A duly signed and acknowledged Trust Easement grant deed in the form of Exhibit F.
- ii. Sufficient funds to pay the Kapiloff Deposit (provided, however, that the purchase price submitted under the Cole Trust Sale Agreement escrow may be used to satisfy this requirement so long as all closing conditions have been met for both escrows and Title Company has been instructed to fund the Kapiloff Deposit through the purchase price under the Cole Trust Sale Agreement).
- iii. Pro forma CLTA title insurance commitments for the Public Trust Easement Lands, in a form and with coverage amounts approved by the Commission.
- d. All patents and quitclaim deeds deposited into Escrow which name either City or the Commission as grantee shall include a certificate of acceptance duly executed by the grantee (which certificate may be deposited into Escrow separately by the grantee). The Parties shall also submit all appropriate attestations or acknowledgments and any ancillary documents required by state law or the City's Assessor-Recorder, such as an executed Transfer Tax Affidavit and executed Preliminary Change of Ownership Report.

7. Impacts of Sea Level Rise.

a. The exchange authorized by this Agreement is intended to establish with certainty lands free of the Trust and lands subject to the Trust, which boundary is intended to be fixed and not subject to change by erosion, accretion, reliction, or submergence, whether due to natural or artificial causes. However, if lands established as free of the Trust should later become submerged or subject to the ebb and flow of the tide below the elevation of mean high water, whether due to erosion or sea level rise (“**Inundation**”), those lands, for so long as the condition of Inundation exists, shall be subject to an easement in favor of the Trust (“**Inundation Easement**”); provided, however, that the Inundation Easement shall not attach until Inundation has existed continuously for five years. Prior to the attachment of the Inundation Easement, neither the Inundation Easement nor the Commission shall prevent any owner of the inundated lands from seeking the necessary regulatory approvals to reclaim or otherwise restore the lands to their pre-Inundation condition so long as the owner has begun activities to reclaim or restore the lands within one year after Inundation. An owner's submittal of an application for any permit required for reclamation or restoration and reasonable efforts to complete the permitting process is sufficient evidence that the owner has begun reclamation or restoration under this Section. Unpermitted reclamation or restoration activities shall be insufficient evidence that the owner has begun reclamation or restoration under this Section. The trustee of adjacent Trust land (whether the Commission or City) may delay the attachment of the Inundation Easement for a specified period by resolution based upon its finding that reclamation or restoration could not be completed within the five-year period of Inundation under this Section.

b. Nothing in this Agreement obligates the City or Commission to protect or cause to be protected any privately held uplands, including, but not limited to, constructing or causing to be constructed any protective structures that benefit any privately held uplands. Further, nothing in this Agreement shall be construed as creating any duty on the part of the City

or the Commission to the owners or lessees of any properties within the Cole Property or Public Trust Easement Lands to provide protection against sea level rise, inundation from any cause, avulsions, or tsunamis.

c. Nothing in this Section is intended to limit (a) rights a Party may have under applicable law to take actions to preserve the boundaries established by this Agreement, including without limitation the rights of a Party to undertake measures to protect its property, including lands freed from the Trust at the locations established pursuant to this Agreement, or to file an action within the applicable limitations period to preserve the title interests of such lands established by this Agreement, or (b) rights the public has under applicable law to navigate, fish, or otherwise use navigable waters on Inundated lands, including but not limited to any rights arising under *Bohn v. Albertson* (1951) 107 Cal.App.2d 738 and *People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040.

8. Judicial Confirmation of Validity of Settlement.

a. Any Party may bring a quiet title action under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the California Code of Civil Procedure to confirm the respective ownership interests established under this Agreement by court judgment.

b. Any Party may choose to submit the settlement embodied in this Agreement to a court of competent jurisdiction to confirm the validity of the settlement by court judgment pursuant to California Code of Civil Procedure section 860 et seq. The statement of decision in the action may include a recitation of the disputed underlying facts identified in this Agreement and shall include a determination whether this Agreement meets the requirements of PRC 6307, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of this Agreement.

c. The Parties shall cooperate in obtaining such a confirmatory judgment. Upon entry of a judgment confirming the validity of the settlement embodied in this Agreement, each Party shall be deemed to have waived any right to appeal from such judgment. Except as the Parties may otherwise agree in writing, Cole Trust shall be responsible for all costs incurred by the Commission and the City associated with their participation in a judicial action initiated by Cole Trust pursuant to this Section including without limitation reasonable attorneys' fees and costs.

9. Indemnification and Defense of Claims.

a. Cole Trust shall indemnify, defend and hold harmless the Commission, City including Port, and each of their respective officers, agencies, commissions, boards, departments and employees from and against any and all claims, liabilities, losses, costs and expenses (collectively "**Claims**"), including, without limitation, third party Claims and Claims by any governmental agency, in any such case, relating to any Waste or Hazardous Substances that, at any time, whether before or after Closing, are located at, on, over, under, migrate to, or flowing through any portion of the Cole Property, except to the extent that such Waste or Hazardous Substances are located, or come to be located at, on, over or under Former Custer

Avenue solely due to the intentional actions or gross negligence of the City, Port or the State, can be shown by clear and convincing evidence to predate April 17, 1917, and were not exacerbated by the acts or omissions of others. For purposes of this Agreement: (1) “**Hazardous Substances**” shall mean any substance which is defined or regulated under any Environmental Law; (2) “**Waste**” shall have the definition given in California Water Code section 13050; and (3) “**Environmental Law**” shall mean all present and future federal, state and local laws, statutes, ordinances, regulations, rules, judicial and administrative orders and decrees, permits, licenses, approvals, authorizations and similar requirements pertaining to the protection of human health and safety or the environment.

b. The Parties agree to use reasonable efforts to defend this Agreement, any deed, patent, agreement, or other instrument executed pursuant thereto, and any decision made by a Party to approve the foregoing, including the approval of any required findings related thereto, in any legal action challenging the validity or legality thereof. In any such action, Cole Trust shall reimburse the Commission, Port, and City for all costs incurred in connection with such action, including but not limited to reasonable staff time and attorneys’ fees incurred by the Commission, Port, or City, and including but not limited to any award of attorney fees made by a court of competent jurisdiction against the Commission, Port, or City. Nothing in this Section limits the discretion of the Commission, Port, or City, to conduct its own defense or take the lead in its own defense.

10. Execution Before a Notary Public. All signatures of the Parties to this Agreement and all deeds and other instruments of conveyance executed pursuant to this Agreement shall be acknowledged before a Notary Public and a certificate of acknowledgment shall be attached to the executed Agreement and other documents to allow them to be recorded in the Public Records. The Governor’s signature shall be attested to by the Secretary of State.

11. Agreement for Compromise and Settlement. It is expressly understood by the Parties that the provisions set forth in this Agreement have been agreed upon for purposes of compromising and settling disputed interests in the Former Custer Avenue.

12. No Determination of Trust Consistency. Nothing in this Agreement shall be construed as a determination by the Commission, City or Port regarding the Trust consistency of any use of the Public Trust Easement Lands authorized by any other permits and approvals.

13. Agreement Not To Encumber. Except to the extent consistent with the purposes of this Agreement, or as otherwise provided herein, none of the Parties shall sell, transfer, assign, mortgage, pledge, or hypothecate, whether by operation of law or otherwise, any of their respective rights, title, or interests or alleged rights, title, or interests in or to the Cole Property prior to the consummation of the transfers provided for herein, without the prior written consent of the other affected Parties, not to be unreasonably withheld or delayed. Notwithstanding the foregoing, the Cole Trust may mortgage, pledge or hypothecate its interest in the Public Trust Easement Lands without prior written consent so long as the terms of any such encumbrance require a full release of such encumbrance as to the applicable property prior

to the consummation of the transfer, or require the applicable mortgagee to subordinate its rights to the Trust Easement granted hereunder.

14. Further Assurances. So long as authorized by applicable laws to do so, the Parties will perform such other acts, and execute, acknowledge, and deliver all further conveyances and other instruments that may be necessary to fully assure to the other Parties all of the respective properties, rights, titles, interests, remedies, powers and privileges to be conveyed or provided for by this Agreement.

15. Allocation of Costs and Expenses. Cole Trust shall pay the expenses and fees of the escrow agent, including those costs associated with document preparation and recordation of this Agreement, its deeds and patents, and any associated documents. Cole Trust shall also pay all closing costs, including without limitation all expenses and fees associated with any title insurance policy, including the title insurance policy for the Public Trust Easement required by this Agreement.

16. No Admission or Effect if Agreement Not Made Effective. If this Agreement does not become effective, or becomes effective but is declared by a final non-appealable judgment of a court of competent jurisdiction to be invalid, nothing in it shall constitute, or be construed as, an admission by any Party hereto or evidence concerning the boundaries, physical character, or character of title or interest in the Cole Property.

17. No Effect on Other Lands. The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any Party or evidence concerning the boundaries, physical character, or character of rights, title and interest in and to any lands outside the Cole Property.

18. No Damages. No Party shall have any remedy for monetary damages against another Party for breach of this Agreement, excepting recovery of attorneys' fees as provided below, and excepting any indemnification required by this Agreement.

19. Notice: Any notice required pursuant to this Agreement shall be in writing and given by delivering the notice in person or by sending it by registered or certified mail, or overnight mail, return receipt requested, with postage to the addresses shown below or to such other address as the applicable Party may provide in writing in the manner required by this Section. Notices may not be given by facsimile or electronic mail, but a courtesy copy of a notice shall be provided by electronic mail.

Commission:

State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Attn: Seth Blackmon, Chief Counsel

Email: Seth.Blackmon@slc.ca.gov

With copies to:

Office of the Attorney General
State of California
1515 Clay Street, 20th Floor
Oakland, CA 94612
Attn: David Alderson
Email: David.Alderson@doj.ca.gov

City:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Elaine Forbes, Executive Director
Email: elaine.forbes@sfport.com

With copies to:

City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
Attn: Andrico Penick, Director of Property
Email: andrico.penick@sfgov.org

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Michelle Sexton, Port General Counsel
Email: michelle.sexton@sfgov.org

San Francisco City Attorney's Office
City Hall, Rm. 234
1 Dr. Goodlett Place
San Francisco, CA 94102
Attn: Charles Sullivan, Deputy City Attorney
Email: charles.sullivan@sfcityatty.org

Cole Trust:

4100 Windward Court
Discovery Bay CA 94505

with a copy to:

George P. Eshoo, Esq.
702 Marshall St. Ste 500
Redwood City, CA 94063
Email: georgeeshoo@aol.com

and with copies to:

DECA
1620-1680 Davidson LLC
201 Spear Street, Suite 1100
San Francisco, CA 94105
Email: Daniel.sachs@decaco.com

Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3
San Francisco, CA 94105-0921
Attn: Neil H. Sekhri, Esq.
Email: nsekhri@gibsondunn.com

20. Acceptance of Conveyances and Consent to Recording. By their execution of this Agreement, the Parties each agree to accept the conveyance of rights, titles, and interests in land referred to in this Agreement, subject to the approvals and conditions described in this Agreement, and consent to the recording of this Agreement and other documents executed pursuant to this Agreement.

21. Approvals and Consents. Unless otherwise provided in this Agreement, whenever an approval, consent or satisfaction is required of a Party, the approval, consent or satisfaction shall be given on behalf of the Party by the representative(s) listed below.

a. If the Party is the Commission: by the Commission, as may be evidenced by appropriate document executed by the Executive Officer of the Commission.

b. If the Party is City or Port: by the Director of Property or the Executive Director of the Port, as authorized by the San Francisco Board of Supervisors.

c. If the Party is Cole Trust: by Cole Trust's authorized representative.

22. Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement, in a legal description or the reference to or within any exhibit with respect to a legal description, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits, the Parties affected by the error by mutual written agreement may correct such error by memorandum reflecting the intent of the Parties concerning the relevant exhibits, legal descriptions, or other provisions at the time of approval and execution of this Agreement. The Executive Officer of the Commission, the Executive Director of the Port, and the Cole Trust, as

applicable, may approve and execute such a “**Memorandum of Correction**” without the necessity of amendment of this Agreement. Such Memorandum of Correction shall be recorded.

23. Agreement Binding on Successors. All the terms, provisions, and conditions of this Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, successors, and assigns of the Parties.

24. Entire Agreement. As of the Closing, this Agreement, and additionally, as to the City and Cole Trust, the Sale Agreement and the Final Settlement Agreement, supersedes any and all other prior agreements and understandings, either oral or in writing, between the Parties with respect to the subject matter of this Agreement, and no other prior agreement, statement, or promise relating to the subject matter of this Agreement, and additionally, as to the City and Cole Trust, the Sale Agreement, the Final Settlement Agreement, and any surviving provisions of the Initial Settlement Agreement, which is not contained herein, shall be valid or binding. Each Party acknowledges and agrees that as of the Closing Date, this Agreement, and additionally, as to City and Cole Trust, the Sale Agreement and the Final Settlement Agreement, shall constitute the entire agreement between the Parties individually or jointly concerning the subject matter of this Agreement.

25. Severability. The Parties acknowledge and agree that if any agreement, covenant, provision, term or condition in this Agreement is invalid, illegal or incapable of being enforced under any applicable rule or law of either the State of California or the United States of America by a court of competent jurisdiction, such agreement, covenant, provision, term or condition shall be ineffective only to the extent of such invalidity, illegality or unenforceability and all other agreements, covenants, provisions, terms and conditions in this Agreement shall nevertheless remain in full force and effect; provided that the elimination or invalidity of such agreement, covenant, provision, term or condition does not materially alter the intent of the Agreement or the consideration received by any Party.

26. Modification. Except as explicitly stated in this Agreement, no modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by the Parties to this Agreement.

27. No Effect on Other Government Jurisdiction. This Agreement has no effect whatsoever on the regulatory, environmental or other jurisdiction of any federal, state, local, or other government entity not a party to this Agreement.

28. Headings. The title headings of the Sections of this Agreement are inserted for convenience only and shall not be considered in construing this Agreement.

29. Effective Date. This Agreement shall become effective upon execution by the Governor. Notwithstanding the preceding sentence, for purposes of bringing a validation action as described in Section 8 this Agreement shall be deemed entered into upon execution by

the Executive Officer of the Commission, who shall be the last to sign prior to the signature of the Governor.

30. Execution. Notwithstanding anything to the contrary contained in this Agreement, the Cole Trust acknowledges and agrees that the Commission and City have no obligation to execute this Agreement until and unless (i) this Agreement, the Sale Agreement, and the Final Settlement Agreement have been duly approved and (ii) the Cole Trust executes this Agreement, the Sale Agreement and the Final Settlement Agreement.

31. Termination. If the transactions contemplated by this Agreement have not Closed by the Outside Date, this Agreement shall automatically terminate and be of no further force and effect unless extended in writing by each Party in their sole and absolute discretion. Upon termination under this Section, the Parties will have no obligations or liabilities under this Agreement and this Agreement shall be null and void.

32. Exhibits A through G. Exhibits A through G, inclusive, are attached to this Agreement and are incorporated by reference.

To witness this Agreement, a duly authorized officer of each Party has executed it below on the date opposite each signature.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

PORT 7/7/22

STATE OF CALIFORNIA
STATE LANDS COMMISSION

DATED: _____

By: _____
Jennifer Lucchesi
Executive Officer

Approved as to form:

Robert Bonta
Attorney General of the
State of California

DATED: _____

By: _____
Amanda Johnson
Deputy Attorney General

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

DATED: _____

CITY AND COUNTY OF SAN FRANCISCO, acting by and through the SAN FRANCISCO PORT COMMISSION as a trustee under Chapter 1333 of the Statutes of 1968

By: _____
Elaine Forbes, Executive Director

DATED: _____

SAN FRANCISCO REAL ESTATE DEPARTMENT

By: _____
Andrico Q. Penick,
Director of Property

Approved as to form:
David Chiu, City Attorney

By: _____
Rona H. Sandler
Deputy City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

PORT 7/7/22

**2006 MURRAY G. AND
DORIS M. COLE REVOCABLE
TRUST**

By: _____
Murray G. Cole, Trustee

Date: _____

By: _____
Doris M. Cole, Trustee

Date: _____

Approved as to form:
George P. Eshoo, Esq.
Attorney for **2006 MURRAY G.
AND DORIS M. COLE REVOCABLE
TRUST**

By: _____
George P. Eshoo, Esq.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

PORT 7/7/22

IN APPROVAL WHEREOF, I, Gavin Newsom, Governor of the State of California, have set my hand and caused the Seal of the State of California to be hereunto affixed pursuant to section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this _____, 2022.

Gavin Newsom
Governor, State of California

Attest:
SECRETARY OF STATE

By: _____
[Dr. Shirley N. Weber, PhD](#)
Secretary of State

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Name/Description</u>
A.	Legal Description and Illustrative Plat of Cole Property
B.	Legal Description and Illustrative Plat of SB 815 Parcel
C.	Form of City Quitclaim Deed to State for Cole Property and State Certificate of Acceptance
D.	Form of State Trust Termination Patent to City for SB 815 Parcel and City Certificate of Acceptance
E.	Legal Description and Illustrative Plat of Public Trust Easement Lands
F.	Form of Cole Trust Public Trust Easement Grant Deed to State and Certificate of Acceptance
G.	Form of State Trust Termination Patent to Cole Trust for Cole Property

EXHIBIT A

**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF COLE PROPERTY
[ATTACHED]**

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT B

LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF SB 815 PARCEL

[ATTACHED]

EXHIBIT C
FORM OF CITY QUITCLAIM DEED TO STATE

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN Nos.
Block 5215, Lot 021
Block 5215, Lot 017
Block 5215, Lot 022
SLC No. [_____]

QUITCLAIM DEED

WHEREAS, pursuant to Chapter 1333, Statutes of 1968, as amended (“**Burton Act**”), and the implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded on January 30, 1969 as Instrument No. R40413 in Book B 308, Page 686, of the Official Records of the City and County of San Francisco (“**Transfer Agreement**”), the State of California (“**State**”) granted and conveyed to the City and County of San Francisco, a charter city and municipal corporation (“**City**”), all of the State’s right, title and interest in certain property within the City, subject to the public trust for navigation, commerce and fisheries and the terms and conditions of the Burton Act and the Transfer Agreement (collectively, “**Trust**”), to be held and administered by the San Francisco Port Commission (“**Port**”); and

WHEREAS, the granted lands included a “paper street” known as Custer Avenue, a portion of which was closed and abandoned by City Resolution number 14166 finally approved on March 27, 1917 (“**Former Custer Avenue**”); and

WHEREAS, the City’s and State’s title to a portion of Former Custer Avenue has been disputed by Murray G. Cole and Doris M. Cole as Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 (collectively, “**Cole Trust**”);

WHEREAS, Cole Trust claims ownership of 1620, 1650, and 1680 Davidson Avenue in San Francisco, including a portion of Former Custer Avenue and the abutting parcels, as more particularly described and depicted in **Exhibit 1** (the “**Cole Property**”); and

WHEREAS, there is uncertainty as to the extent to which the Cole Property, as former tide and submerged lands, is subject to the Trust; and

WHEREAS, to resolve their dispute, Port and the Cole Trust entered into a settlement agreement, dated [Date xx, 2022] for reference purposes, under which, among other things, the Port agreed to sell a portion of Former Custer Avenue to Cole Trust pursuant to California Statutes of 2007, Chapter 660; and

WHEREAS, as to the remainder of the Cole Property, the parties agreed to enter into a Public Trust Exchange and Title Settlement Agreement For 1620-1650-1680 Davidson Avenue with the California State Lands Commission (“**Commission**”) (“**Exchange Agreement**”) which, subject to the necessary findings and approvals by the Port, City and State, authorizes an exchange of lands pursuant to Public Resources Code section 6307; and

WHEREAS, the Exchange Agreement provides among other things that, to effectuate the exchange, the City will quitclaim to the Commission all of the City’s right, title and interest acquired by virtue of the Burton Act and Transfer Agreement in the Property described in **Exhibit 1**; and

WHEREAS, the Port, by Port Resolution [____] adopted on [____], approved the Exchange Agreement; and

WHEREAS, the City, acting by and through its Board of Supervisors, by Resolution No. [____] approved on [____] and signed by the Mayor on [____], approved the Exchange Agreement and authorized the Port Executive Director and the San Francisco Director of Property to implement the Exchange Agreement; and

WHEREAS, the Commission, at its public meeting on [____], approved Staff Report No. [____], which approved the Exchange Agreement; and

WHEREAS, the parties thereafter executed the Exchange Agreement on [____].

NOW, THEREFORE,

The CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation, acting by and through the SAN FRANCISCO PORT COMMISSION, hereby REMISES, RELEASES, AND FOREVER QUITCLAIMS to the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, any and all of the right, title and interest of the CITY AND COUNTY OF SAN FRANCISCO in the Property described in **Exhibit 1** and acquired by virtue of the Burton Act and the Transfer Agreement.

[Signatures on following page]

Executed on _____, 202_

DESCRIPTION CHECKED/APPROVED:

By: _____
[NAME]
City Engineer, City and County of San
Francisco

CITY AND COUNTY OF SAN
FRANCISCO, a charter city and municipal
corporation

By: _____
Andrico Q. Penick
Director of Property

CITY AND COUNTY OF SAN
FRANCISCO, acting by and through the
SAN FRANCISCO PORT COMMISSION
as a trustee under Chapter 1333 of the
Statutes of 1968, as amended

By: _____
Elaine Forbes, Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING
Government Code 27281

[CITY QUITCLAIM]

This is to certify that the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby accepts from the CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation, acting by and through the SAN FRANCISCO PORT COMMISSION, the right, title and interest in real property conveyed by the Quitclaim Deed dated _____, 2022.

The STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby consents to the recordation of this conveyance in the Office of the Assessor-Recorder for the City and County of San Francisco.

This acceptance and consent to recording is executed by and on behalf of the STATE OF CALIFORNIA by the STATE LANDS COMMISSION, acting pursuant to law, as authorized by the Commission’s approval of Staff Report No. [__] on [_____], 2022, by its duly authorized undersigned officer.

STATE OF CALIFORNIA, STATE
LANDS COMMISSION

Date: _____

Jennifer Lucchesi
EXECUTIVE OFFICER

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1 TO EXHIBIT C
LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF COLE PROPERTY
[to be attached at closing]

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT D
FORM OF SB 815 PATENT

[STATE TO CITY]

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section
27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN Nos.
Block 5215, Lot 021
Block 5215, Lot 017
Block 5215, Lot 022
SLC No. [_____]

STATE OF CALIFORNIA
TRUST TERMINATION PATENT

WHEREAS, pursuant to Chapter 1333, Statutes of 1968, as amended (“**Burton Act**”), and the implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded on January 30, 1969 as Instrument No. R40413 in Book B 308, Page 686, of the Official Records of the City and County of San Francisco (“**Transfer Agreement**”), the State of California (“**State**”) granted and conveyed to the City and County of San Francisco, a charter city and municipal corporation (“**City**”), all of the State’s right, title and interest in certain property within the City, subject to the public trust for navigation, commerce and fisheries and the terms and conditions of the Burton Act and the Transfer Agreement (collectively, “**Trust**”), to be held and administered by the San Francisco Port Commission (“**Port**”); and

WHEREAS, the granted lands included a “paper street” known as Custer Avenue, a portion of which was closed and abandoned by City Resolution number 14166 finally approved on March 27, 1917 (“**Former Custer Avenue**”); and

WHEREAS, the City’s and State’s title to a portion of Former Custer Avenue has been disputed by Murray G. Cole and Doris M. Cole as Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 (collectively, “**Cole Trust**”);

WHEREAS, Cole Trust claims ownership of 1620, 1650, and 1680 Davidson Avenue in San Francisco, including a portion of Former Custer Avenue and the abutting parcels (the “**Cole Property**”); and

WHEREAS, there is uncertainty as to the extent to which the Cole Property, as former tide and submerged lands, is subject to the Trust; and

WHEREAS, to resolve their dispute, Port and the Cole Trust entered into a settlement agreement, dated [Date xx, 2022] for reference purposes, under which, among other things, the Port agreed to sell a portion of Former Custer Avenue to Cole Trust pursuant to California Statutes of 2007, Chapter 660 (the “**SB 815 Parcel**”), more particularly described and depicted in **Exhibit 1**; and

WHEREAS, the Port, by Port Resolution [____] adopted on [____], approved the Exchange Agreement; and

WHEREAS, the City, acting by and through its Board of Supervisors, by Resolution No. [____] approved on [____] and signed by the Mayor on [____], approved the Exchange Agreement and authorized the Port Executive Director and the San Francisco Director of Property to implement the Exchange Agreement; and

WHEREAS, the Commission, at its public meeting on [____], approved Staff Report No. [____], which approved the Exchange Agreement; and

WHEREAS, the parties thereafter executed the Exchange Agreement on [____].

WHEREAS, the City, acting by and through the Port Commission, has conveyed, remised, released, and forever quitclaimed to the State, all of the City’s right, title, and interest in the SB 815 Parcel;

WHEREAS, the State, acting by and through the Commission, has accepted the City’s quitclaim of the SB 815 Parcel;

NOW, THEREFORE,

The STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to the CITY AND COUNTY OF SAN FRANCISCO, acting by and through its PORT COMMISSION, all of the State’s right, title, and interest in the SB 815 Parcel as described in **Exhibit 1**, subject to the reservation of all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state, its successors, or assignees.

This Patent is intended to and does terminate the Trust in the SB 815 Parcel and the SB 815 Parcel is hereby freed from the Trust.

IN APPROVAL WHEREOF, I, Gavin Newsom, Governor of the State of California, have set my hand and caused the seal of the State of California to be hereunto affixed pursuant to Section 7730 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this ____ day of _____, two thousand twenty-____.

Gavin Newsom
GOVERNOR

Attest:

[Dr. Shirley N. Weber, PhD](#)
SECRETARY OF STATE

Countersigned:

Jennifer Lucchesi
EXECUTIVE OFFICER
STATE LANDS COMMISSION

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING
Government Code 27281

This is to certify that the interest in real property conveyed by the Patent and Trust Termination dated _____, 2022, from the State of California, acting by and through the State Lands Commission, to the City and County of San Francisco, a charter City, is hereby accepted by the City and County of San Francisco. This acceptance is made pursuant to authority conferred by Board of Supervisors Ordinance No. XXXX, adopted on XXXXX, 2022, and Port Resolution XXXX, adopted on XXXXXX, 2022. The property shall be forever freed from the public trust. The grantee consents to the recordation of this conveyance by its duly authorized officer.

CITY AND COUNTY OF SAN
FRANCISCO

Date:

By: _____

Andrico Q. Penick
Director of Property

Approved as to form:

City Attorney

Date:

By: _____

Michelle Sexton
Port General Counsel

EXHIBIT 1 TO EXHIBIT D
LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF SB 815 PARCEL
[to be attached at closing]

EXHIBIT E

**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF
PUBLIC TRUST EASEMENT LANDS**

[ATTACHED]

[PAGE INTENTIONALLY LEFT BLANK]

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT F
Form of Trust Easement Grant Deed

OFFICIAL STATE BUSINESS - EXEMPT FROM
 RECORDING FEES PURSUANT TO GOVERNMENT
 CODE SECTION 27383 AND DOCUMENTARY
 TRANSFER TAX PURSUANT TO SF BUSINESS AND
 TAX REGULATIONS CODE SECTION 1105

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Easement Grant Deed

APN(S):
 5215-021 (a portion)
 5215-022 (a portion)
 City and County of San Francisco

Murray G. Cole and Doris M. Cole, Trustees of 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 ("**Grantor**") hereby GRANTS to STATE OF CALIFORNIA, acting by and through the State Lands Commission ("**Grantee**"), a public trust easement for commerce, navigation, and fisheries, in the following described real property situated in the State of California, City and County of San Francisco, described as follows:

See **Exhibit 1** consisting of [____] ([_]) pages attached hereto
 and by this reference made a part hereof.

Grantor and Grantee intend that the easement, or portion of easement, shall not merge with the fee if the easement and fee are held simultaneously by the State during the transactions contemplated by the Public Trust Exchange and Title Settlement Agreement For 1620-1650-1680 Davidson Avenue dated _____, 2022.

[Signatures on following page]

GRANTOR:

Murray G. Cole and Doris M. Cole Trustees
of the 2006 Murray G. and Doris M. Cole
Revocable Trust Dated August 1, 2006

By: _____

Name: Murray G. Cole

Its: Trustee

Date: _____

By: _____

Name: Doris M. Cole

Its: Trustee

Date: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT 1 TO EXHIBIT F

LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF TRUST EASEMENT

[to be attached at closing]

A.P.N.: [_____]
S.L.C. No. [_____]

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING
PUBLIC TRUST EASEMENT
Government Code 27281

This is to certify that STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby accepts from Murray G. Cole and Doris M. Cole, Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006, the attached Easement Grant Deed dated _____, 202_, conveying a public trust easement for commerce, navigation and fisheries in the real property described therein.

The STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, an agency of STATE OF CALIFORNIA, hereby consents to the recordation of this conveyance in the Office of the Assessor-Recorder for the City and County of San Francisco.

The said interests in real property are accepted by STATE OF CALIFORNIA, in its sovereign capacity in trust for the people of the state, as real property of the legal character of tidelands and submerged lands.

This acceptance and consent to recording is executed by and on behalf of the STATE OF CALIFORNIA by the STATE LANDS COMMISSION, acting pursuant to law, as authorized by the Commission's approval of Staff Report No. [__] on [_____], 202_, by its duly authorized undersigned officer.

STATE OF CALIFORNIA
STATE LANDS
COMMISSION

Dated: _____

By: _____
Jennifer Lucchesi
Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT G
FORM OF TRUST TERMINATION PATENT
[STATE TO COLE TRUST]

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The Undersigned Grantee Declares:
DOCUMENTARY TRANSFER TAX is
[] computed on full value of property conveyed, OR
[] computed on the full value less value of liens and encumbrances remaining at time of sale,
[] unincorporated area; () City of

By Grantee
Name:
Date:

APN Nos.
Block 5215, Lot 017
Block 5215, Lot 021
Block 5215, Lot 022
SLC No. [_____]

STATE OF CALIFORNIA
TRUST TERMINATION PATENT

WHEREAS, Murray G. Cole and Doris M. Cole, Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 (collectively, "**Cole Trust**"), claim to own the property located at 1620 Davidson, 1650 Davidson, and 1680 Davidson, situated in the City and County of San Francisco ("**Cole Property**"), including a portion of former Custer Avenue; and

WHEREAS the State of California (“**State**”) contends that, the Cole Property was historically tide and submerged lands owned by the State as an aspect of its sovereignty; that portions of the Cole Property were sold pursuant to Chapter 543, Statutes of 1868; and that a portion of the Cole Property known as “Third” or “Custer” Avenue was reserved from sale and retained by the State. The State further contends that pursuant to Chapter 1333, Statutes of 1968, as amended (“**Burton Act**”), and the implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded on January 30, 1969 as Instrument No. R40413 in Book B 308, Page 686 of the Official Records of San Francisco (“**Transfer Agreement**”), the State granted and conveyed to the City and County of San Francisco, a charter city and county (“**City**”), all of the State’s right, title and interest in certain lands in San Francisco, including the portion of former Custer Avenue within the Cole Property, subject to the public trust for navigation, commerce and fisheries (“**Public Trust**”) and to the terms and conditions of the Burton Act and the Transfer Agreement (together with the Public Trust, the “**Trust**”), to be held and administered by the San Francisco Port Commission (“**Port**”), and that the granted lands included the Cole Property; and

WHEREAS, there is uncertainty as to the extent to which the Cole Property, as former tide and submerged lands, is subject to the Trust; and

WHEREAS, to resolve their dispute, the Port and Cole Trust agreed to enter into a Public Trust Exchange and Title Settlement Agreement For 1620-1650-1680 Davidson Avenue with the California State Lands Commission (“**Commission**”) (“**Exchange Agreement**”), which, subject to the necessary findings and approvals by the Port, City and State, authorizes an exchange of lands pursuant to Public Resources Code section 6307 in the property, as more particularly described in **Exhibit 1 (“Property”)**; and

WHEREAS, the Exchange Agreement provides among other things that, to effectuate the exchange, the City will quitclaim to the Commission all of the City’s right, title and interest acquired by virtue of the Burton Act and Transfer Agreement in the Property, the Cole Trust will convey to the Commission a Public Trust easement (“**Public Trust Easement**”) over a portion of the Property (“**Public Trust Easement Lands**”) as more particularly described in **Exhibit 2**, the Commission will patent to the City all the State’s right, title, and interest in a portion of the Property (“**SB 815 Parcel**”) as more particularly described in **Exhibit 3**, but reserving any mineral interest, and the Commission will patent to Cole Trust all of the State’s right, title and interest in the Property, including any mineral interest in the SB 815 Parcel and reserving the Public Trust Easement; and

WHEREAS, the Exchange Agreement further provides that the Trust will be terminated in the Property other than in the Public Trust Easement Lands; and

WHEREAS, the Port, by Port Resolution [____] adopted on [____], approved the Exchange Agreement; and

WHEREAS, the City, acting by and through its Board of Supervisors, by Resolution No. [____] approved on [____] and signed by the Mayor on [____], approved the

Exchange Agreement and authorized the Port Executive Director and the San Francisco Director of Property to implement the Agreement; and

WHEREAS, the Commission, at its public meeting on [_____], approved Staff Report No. [___], which approved the Exchange Agreement; and

WHEREAS, the parties thereafter executed the Exchange Agreement; and

WHEREAS, pursuant to the Exchange Agreement, City has conveyed, remised, released, and forever quitclaimed to the State, acting by and through the Commission, all of its right, title and interest acquired by virtue of the Burton Act and Transfer Agreement in the Property, and the State, acting by and through the Executive Officer of the Commission pursuant to Staff Report No. [___], has accepted the Property; and

WHEREAS, the Commission has found and declared, inter alia, that the Property, other than the Public Trust Easement Lands has been cut off from water access and no longer is in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and is relatively useless for purposes of the public trust for navigation, commerce and fisheries, and for purposes of the Burton Act; and

WHEREAS, pursuant to the Exchange Agreement, it is the intent of the State to quitclaim to Cole Trust all of its right, title and interest in and to the Property, and to terminate the Trust, but reserving the Public Trust Easement;

NOW, THEREFORE,

The STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to Murray G. Cole and Doris M. Cole, Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006, all of the State's right, title, and interest in the Property, but reserving the Public Trust Easement in the Public Trust Easement Lands.

This Patent is intended to and does terminate the Trust in the Property, and the Property is hereby freed from the Trust except for the Public Trust Easement Lands.

[SIGNATURES ON FOLLOWING PAGE]

IN APPROVAL WHEREOF, I, Gavin Newsom, Governor of the State of California, have set my hand and caused the seal of the State of California to be hereunto affixed pursuant to Section 7730 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this ____ day of _____, two thousand twenty-____.

Gavin Newsom
GOVERNOR

Attest:

[Dr. Shirley N. Weber, PhD](#)
SECRETARY OF STATE

Countersigned:

Jennifer Lucchesi
EXECUTIVE OFFICER
STATE LANDS COMMISSION

EXHIBIT 1 TO EXHIBIT G
LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT
PROPERTY

[To be attached at closing]

EXHIBIT 2 TO EXHIBIT G
LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF SB 815 PARCEL

[To be attached at closing]

EXHIBIT 3 TO EXHIBIT G
LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF PUBLIC TRUST EASEMENT
LANDS

[To be attached at closing]