

EXHIBIT B



**CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR**

AGREEMENT FOR SALE OF REAL ESTATE

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
ACTING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006
("Buyer")**

**PORTIONS OF
CUSTER AVENUE, SAN FRANCISCO, CALIFORNIA**

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**WILLIE ADAMS, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
JOHN L. BURTON, COMMISSIONER
GAIL GILMAN, COMMISSIONER**

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AGREEMENT FOR SALE OF REAL ESTATE
(Portions of Former Custer Avenue, San Francisco)

THIS AGREEMENT FOR SALE OF REAL ESTATE (this “**Agreement**”) dated for reference purposes only as of _____, 2022, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation (“**City**”) acting by and through the San Francisco Port Commission (“**Port**”), and Murray G. Cole and Doris M. Cole, trustees of the 2006 Murray G. and Doris M Cole Revocable Trust dated August 1 2006, (“**Cole Trust**” or “**Buyer**”) (individually a “**Party**” and together the “**Parties**”).

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

A. The Cole Trust contends that it is the owner of certain real property located between Islais Creek and Davidson Avenue in San Francisco, commonly referred to as 1620, 1650, and 1680 Davidson Avenue (the “**Cole Property**”). The Cole Property includes within its borders a portion of a “paper street” known as Custer Avenue (“**Former Custer Avenue**”).

B. The Port contends that the City owns Former Custer Avenue which was transferred in trust to the City (acting by and through the Port Commission) by the State (acting by and through the State Lands Commission) pursuant to California Statutes of 1968, Chapter 1333, 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 (the “**Transfer Agreement**”), to be held by the Port subject to the public trust for commerce, navigation, and fisheries (“**Public Trust**”) and the terms and conditions of the Burton Act and Transfer Agreement (“**Burton Act Trust**,” and together with the Public Trust, the “**Trust**”). *Exhibit A* attached and incorporated hereto shows a general vicinity map showing the Cole Property and Former Custer Avenue.

C. Each of the statements and positions of the Parties set forth above is in dispute (“**Title Claims**”). The Cole Trust disputes the validity of Port's claim of any interest in Former Custer Avenue and asserts that the Port and the State have no right, title, or interest in Former Custer Avenue and that the Cole Trust is entitled to quiet title of Former Custer Avenue and to seek damages under several legal theories. The Port contends that the City owns fee title to the Former Custer Avenue subject to the Trust and has claims against the Cole Trust, including without limitation claims for encroachment, trespass, and back rent. The Cole Trust and its predecessor owners allege that they have paid all property taxes on the Cole Property since at least the early 1960s.

D. By settlement agreement dated May 25, 2021, the Port and the Cole Trust agreed to resolve their Title Claims 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**”). On _____, the Port Commission approved the Parties’ agreement to finally resolve their Title Claims (the “**Final Settlement Agreement**”).

E. As contemplated by the Final Settlement Agreement, pursuant to its authority under California Statutes of 2007, Chapter 660 (“**SB 815**”) Sections (1)(p)(3) and (8) and in accordance with Section 3, Article X of the California Constitution, this Agreement provides for sale by the City of that certain real property described in the Final Settlement Agreement as the “**SB 815 Parcel**” consisting of a portion of Former Custer Avenue lying southerly of a line parallel with and distant 100 feet landward from the mean high water line of San Francisco Bay within 1650 Davidson Street, San Francisco, California consisting of approximately 2,364 square feet as more particularly described in the attached *Exhibit B* (the “**Property**”). In accordance with Section 8(d) of SB 815, the City and Port will quitclaim its Burton Act Trust interest to the state and receive from the State Lands Commission a patent to the right, title, and interest in the SB 815 parcel that the City will quitclaim to the Buyer. The Final Settlement Agreement also

requires the City and the Cole Trust to concurrently enter into a Public Trust Exchange and Title Settlement Agreement with the State Lands Commission (“**State Lands**”) for 1620-1650-1680 Davidson (“**Exchange Agreement**”) authorizing an exchange that will, among other things (i) quitclaim to the Cole Trust the City and State interests in the remainder of the Cole Property, free of the Trust except for an eighteen foot (18’) wide strip of land within the Cole Property immediately adjacent to its northerly boundary, near Islais Creek which will be impressed with a Public Trust easement and (ii) require the Cole Trust to pay money to the State that will be deposited into the Kapiloff Land Bank Fund (Public Resources Code 8600-8602).

F. The Parties desire to conclude the transactions called for in this Agreement and the Exchange Agreement in order to finally resolve the Title Claims as further described in the Final Settlement Agreement.

G. On February 16, 2022, the San Francisco Planning Department determined that this Agreement, the Final Settlement Agreement and the Exchange Agreement are statutorily exempt from review under the California Environmental Quality Act (“**CEQA**”) under Public Resources Code §21080.11; and on March 10, 2022, the San Francisco Planning Department determined that the project, on balance, is in conformity with the General Plan.

H. The San Francisco Port Commission approved this Agreement by Resolution [_____] adopted on [_____] (the “**Port Commission Resolution**”). The San Francisco Board of Supervisors, by Resolution [_____] adopted on [_____] and signed by the Mayor on [_____] 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 Supervisors’ Approval**”).

I. In order for the Property to be transferred free of the Trust, State Lands must make certain findings under SB 815. The State Lands Commission made the findings required under Section 8(b) of SB 815 by Staff Report No. [_____] at its meeting of [_____] State Lands also approved the Exchange Agreement by Staff Report No. [_____] at its meeting of [_____] .

J. 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**”) and the Cole Trust desires to coordinate same day closings such that the sale of the Cole Property will take place immediately following the Closing of the Exchange Agreement and this Agreement. The City has no objection; provided however, that the obligations and transactions under this Agreement, the Exchange Agreement, and the Final Settlement Agreement are separately binding on the Parties and are not conditioned on consummation of the Cole Trust Sale Agreement.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Buyer hereby agree as follows:

- 1. SALE AND PURCHASE.** Subject to the terms, covenants and conditions set forth herein, City agrees to sell to Buyer, and Buyer agrees to purchase from City, City’s interest in the Property. The Property shall be conveyed free of the Trust.
- 2. PURCHASE PRICE.** The purchase price for the Property is One Hundred Sixty Thousand Dollars (\$160,000.00) (the “**Purchase Price**”). All sums payable hereunder shall be paid in immediately available funds of lawful money of the United States of America.
- 3. TITLE.**

3.1. Conditions of Title. At the Closing, City shall quitclaim interest in and to the Property to Buyer by quitclaim deed in the form of *Exhibit C* attached hereto (the “**Quitclaim Deed**”). City makes no representation or warranty as to the condition of title.

3.2. Buyer's Responsibility for Title Insurance. Buyer understands and agrees that the right, title and interest conveyed shall not exceed that vested in City by virtue of the Burton Act, and City is under no obligation to furnish any policy of title insurance in connection with this transaction. Buyer recognizes that any fences or other physical monument of the Property's boundary lines may not correspond to the legal description of the Property. City shall not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate survey or inspection might reveal. It is Buyer's sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

4. "AS IS" PURCHASE; RELEASE OF CITY.

4.1. Buyer's Independent Investigation. Buyer represents and warrants to City that Buyer has been in physical possession of the Property for many years and has full knowledge of the condition of the Property. As such, Buyer is well aware of each and every aspect of the Property, and forgoes any further investigation, either independently or through agents of Buyer's choosing, including, without limitation, the following matters (collectively, the "**Property Conditions**"):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of City's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes.

(c) The quality, nature, adequacy and physical condition of the Property, , and all other physical and functional aspects of the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition of the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter 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.

(e) The suitability of the Property for Buyer's intended uses.

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting the Property.

4.2. Property Disclosures. Buyer acknowledges the following:

(a) Hazardous Materials. California Law requires sellers to disclose to buyers 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 Property, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the Hazardous Materials described in the reports listed in the attached *Schedule x*, copies of which have been delivered to or made available to Buyer may be present on the Property. By execution of this Agreement, Buyer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

(b) FEMA-National Flood Insurance Program Disclosure Notice. As part of the National Flood Insurance Program (“**NFIP**”), Federal Emergency Management Agency (“**FEMA**”) issued the final flood insurance rate maps (“**FIRMs**”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“**Floodplain Management Program Ordinance**”) and became effective on March 23, 2021. Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“**City**”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“**SFHAs**”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent. The City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter is available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:
<https://onesanfrancisco.org/isan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:
<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:
www.FloodSmart.gov.

(c) 100-Year Storm Flood Risk. Under San Francisco Police Code Article 51 (“**Article 51**”), property owners in San Francisco are required to disclose to transferees and prospective transferees if the subject property is Flood Risk Parcel, meaning that it is subject to Deep and Contiguous Flooding in a 100-Year Storm (each as defined in Article 51), as shown on the San Francisco Public Utilities Commission’s 100-Year Storm Flood Risk Map. The Property is a Flood Risk Parcel. See *Exhibit D* to this Agreement for the required disclosure information.

(d) Liquefaction. According to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about the potential areas of liquefaction may be found at <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.htm>.

(e) The Property is in (i) a delineated earthquake fault zone (CA Public Resources Code Section 2621.9) and (ii) a seismic hazard zone (CA Public Resources Code Section 2694).

4.3. “As Is” Purchase. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING CITY’S INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. BUYER IS RELYING SOLELY ON ITS PERSONAL KNOWLEDGE AND ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR BUYER'S INTENDED USES, THE CONDITION OF TITLE, OR ANY OF THE PROPERTY CONDITIONS. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, TITLE, OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. IT IS BUYER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

4.4. Release of City. As part of its agreement to purchase the Property in its “As Is With All Faults” condition, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its departments, boards, commissions, officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) Buyer’s and its Agents and customer’s past, present and future use of the Property, (ii) the physical, geological or environmental condition of the Property, including, without limitation, any Hazardous Material in, on, under, above or about the Property, (iii) the condition of title, and (iv) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”, also commonly known as the “**Superfund**” law), as amended by Superfund Amendments and Reauthorization Act of 1986 (“**SARA**”) (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, “**RCRA**”) (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the “**Clean Water Act**”) (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act (“**TSCA**”) (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the “**California Superfund**” law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the “**Business Plan Law**”) (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “**Proposition 65**”) (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE, AND THAT, IF KNOWN TO HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BY PLACING ITS INITIALS BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT BUYER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: BUYER: _____

5. ESCROW AND CLOSING.

5.1. Joint Escrow Instructions. 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 as contemplated by the Exchange Agreement, the Parties shall establish escrow with the Title Company and prepare joint escrow instructions conforming to the requirements of this Agreement, the Exchange 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 Purchase Price under this Agreement if all closing conditions have been met for the Cole Trust Sale Agreement. Notwithstanding the foregoing, the obligations and transactions in this Agreement, the Exchange 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 Exchange Agreement, and the Final Settlement Agreement are independent of the transactions contemplated under the Cole Trust Sale Agreement.

5.2. Closing. “Closing” or “Closing Date” shall mean the date that the Quitclaim Deed is recorded in the Official Records. The Closing Date under this Agreement shall occur on the same date as the closing under the Exchange Agreement. The Closing Date shall occur no later than July 13, 2023 (the “Outside Date”), but the Parties will use their best efforts to close no later than December 31, 2022 (the “Target Date”).

5.3. Conditions Precedent to Closing; Deposits into Escrow.

(a) **Joint Closing Conditions.** It is a condition precedent to each Party’s obligation to close escrow that: (i) State Lands has made the findings required by SB 815; and (ii) the Exchange Agreement has been fully executed and all of the deposits to escrow called for under the Exchange Agreement have been made.

(b) **City’s and Port’s Closing Conditions.** As a condition precedent to City’s and Port’s obligation to close escrow, all of the following shall have occurred:

(i) Buyer shall have performed all of its obligations hereunder and all of Buyer's representations and warranties shall be true and correct as of the Closing.

(ii) the Cole Trust has provided evidence to the City’s satisfaction that it has withdrawn, discontinued, and disavowed any claim against Fidelity National Title Insurance Company and Old Republic Title with respect to the Title Claims; provided however, that, City, in its sole discretion, may waive this closing condition provided further that Fidelity

National Title Insurance Company and Old Republic Title execute a full release of claims against the City in a form and substance acceptable to the City;

(iii) the Board of Supervisors' Approval shall have been obtained;

(iv) all deposits to escrow required of Buyer under this Agreement have been made (or are available in the Escrow for the Cole Trust Sale Agreement);

(v) Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in *Section 5.5* below);

(vi) Such other documents as reasonably required by the City/Port shall be received by Title Company.

(c) Buyer's Closing Conditions. As a condition precedent to Buyer's obligation to close escrow, all of the following shall have occurred:

(i) City and Port shall have performed all of their obligations hereunder;

(ii) all deposits to escrow required of City and Port under this Agreement have been made;

(iii) The Property is not subject to any encumbrances placed on the Property by the City after the Effective Date without the consent of Buyer, excepting (a) liens for taxes or assessments, and (b) the Project Declaration as defined in *Section 8.23*.

(d) *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) A certified copy of the Minute Item for Staff Report No. [___], of the Commission's public hearing on [_____] with the findings required by SB 815;

(ii) the duly executed and acknowledged Quitclaim Deed conveying the Property to Buyer;

(iii) a duly executed and acknowledged counterpart of the Project Declaration;

(iv) Certified copies of the Port Commission Resolution and Board of Supervisors' Approval, each authorizing entry into this Agreement;

(v) an original executed counterpart of this Agreement,

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

(i) the funds necessary to close this transaction comprised of (A) the Purchase Price; plus (B) the Port's transactional costs as set forth in the Final Settlement Agreement;

(ii) a duly executed and acknowledged counterpart of the Project Declaration;

(iii) an original executed counterpart of this Agreement.

5.4. Failure of City's Conditions Precedent. Each of City's Conditions Precedent are intended solely for the benefit of City. If any of City's Conditions Precedent are not satisfied on or before the Outside Date, City may, at its option, terminate this Agreement. Upon any such termination, neither Party shall have any further rights or obligations hereunder except as provided in *Section 7* (Expenses) or *Section 8.2* (Buyer's Representations and Warranties) or as otherwise expressly provided herein.

5.5. Title Company as Real Estate Reporting Person. Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require that certain information be provided to the United States Internal Revenue Service, and a statement to be furnished to City, in connection with the Closing. Buyer and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is hereby designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Buyer and City shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

6. RISK OF LOSS. Each Party shall immediately provide written notice to the other Party if it learns of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event that all or any portion of the Property is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then Buyer may, at its option to be exercised within ten (10) days of the notice specified in this Section, terminate this Agreement by written notice to City. If Buyer fails to terminate this Agreement as provided in this Section, Buyer must consummate the purchase for the full Purchase Price as required by the terms hereof. Buyer acknowledges that City self-insures and shall not be obligated to purchase any third-party commercial liability insurance or property insurance in connection with this Agreement.

7. EXPENSES.

7.1. Costs. Buyer shall pay all expenses and fees in connection with this Agreement and any transfer taxes applicable to the sale, personal property taxes, escrow fees and recording charges and any other costs and charges of the escrow for the sale.

7.2. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Buyer or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the indemnified party from, and hold the indemnified party harmless against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

8. GENERAL PROVISIONS.

8.1. Notices.

Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and may be served by personal delivery or by sending the notice by registered or certified mail, return receipt requested, with postage to the addresses shown below. Any notice or other communication served in the manner described above shall be deemed to have been given and received upon the date of delivery to the addressee or refusal by the addressee to accept delivery. For purposes of notice, the addresses of the Parties shall be as follows:

To Port:

Port of San Francisco
Deputy Director Real Estate and Development
Pier 1
San Francisco, CA 94111

With a copy to: Port General Counsel at the same address

To 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

And with a copy to: DECA
1620-1680 Davidson LLC
201 Spear Street, Suite 1100
San Francisco, CA 94105

The Parties may modify the addresses and/or names of representatives providing notice thereof in accordance with the provisions hereof.

Notices may not be given by facsimile or electronic mail, but a courtesy copy of a notice shall be provided by electronic mail.

8.2. *Buyer's Representations and Warranties.* Buyer makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

(a) Buyer is duly organized and validly existing and in good standing under the laws of the State of California. Buyer has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Buyer has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof.

(b) Buyer represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Buyer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) Buyer represents and warrants to City that this Agreement and all documents executed by Buyer which are to be delivered to City at Closing: (a) are or at the time of Closing will be duly authorized, executed and delivered by Buyer; (b) are or at the time of Closing will be legal, valid and binding obligations of Buyer; and (c) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

(d) No document or instrument furnished or to be furnished by the Buyer to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

Notwithstanding anything to the contrary in this Agreement, the representations and warranties of Buyer contained in this Agreement or in other agreements or documents executed by Buyer in connection with this Agreement shall survive the Closing.

8.3. *Relationship of Parties.* Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Parties. No Party or its representatives shall act or be deemed to act as legal counsel or a representative of any

other Party, unless expressly authorized by this Agreement or retained by such Party for such purpose. The Parties do not intend to waive, and nothing herein shall be deemed to constitute a waiver of, any joint defense privilege that may exist among the Parties or between any of them.

8.4. Amendments. This Agreement shall not be amended, supplemented or modified unless in writing signed by the Parties. Such modification shall only be effective upon execution of a written modification by the Parties and shall be subject to Port Commission and San Francisco Board of Supervisors approval if required.

8.5. Entire Agreement. As of the Closing, this Agreement, the Final Settlement Agreement and the Exchange Agreement supersede 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 including the Initial Settlement Agreement except with respect to provisions that explicitly survive the Initial Settlement Agreement (including without limitation the indemnity and exculpation provisions in Section 6 of the Initial Settlement Agreement), and no other prior agreement, statement, or promise relating to the subject matter of this Agreement, the Final Settlement Agreement and the Exchange Agreement which is not contained herein shall be valid or binding. Each Party acknowledges and agrees that as of the Closing Date, this Agreement, the Final Settlement Agreement, any surviving provisions of the Initial Settlement Agreement, and the Exchange Agreement shall constitute the entire agreement between the Parties individually or jointly concerning the subject matter of this Agreement.

8.6. 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, 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. The Executive Director of the Port and the Cole Trust may approve and execute such a “Memorandum of Correction” without the necessity of amendment of this Agreement.

8.7. Counterparts. This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed an original for all purposes, but all such multiple originals or counterparts together shall constitute one and the same instrument.

8.8. Governing Law; Venue. This Agreement is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each Party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to federal court.

8.9. Miscellaneous. Except as provided in *Section 5.3(e)(i)* or as otherwise expressly provided herein, each Party shall bear its own costs, attorney's fees and other fees incurred in connection with the negotiation and approval of this Agreement and related documents. Each of the Parties represents and warrants that it has read and fully understood the terms of this Agreement, and that it freely and voluntarily enters into and executes this Agreement without undue influence by any person and without relying on any promises, conditions, terms, statements or representations not expressly contained in this Agreement. The Parties warrant that no promise or inducement has been made or offered except as set forth herein as consideration for this Agreement.

8.10. 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.

8.11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns, and with respect to the rights and obligations of the Cole Trust, shall run with the land constituting the Property. Where the term "Party" is used in this Agreement, it means and includes their respective successors and assigns.

8.12. Cooperation. The Parties shall reasonably cooperate to effectuate the purposes and intent of this Agreement and agree to do all things and execute all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

8.13. No Third-Party Beneficiaries. Except as explicitly provided in this Agreement, nothing herein is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties and their respective successors and assigns, if any, nor shall any agreements, covenants, provisions, terms or conditions in this Agreement give any third parties any right of subrogation or action against the Parties.

8.14. Parties and Their Agents. The term "Buyer" as used herein shall include the plural as well as the singular. If Buyer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Buyer shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors, tenants, and representatives of such party.

8.15. Interpretation of Agreement. The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement 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, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

8.16. Time of Essence. Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

8.17. No Merger. The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

8.18. Non-Liability of City Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, department, employee or agent of City shall be personally liable to Buyer, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Buyer, its successors and assigns, or for any obligation of City under this Agreement.

8.19. *Conflicts of Interest.* Through its execution of this Agreement, Buyer acknowledges that it is familiar with the provisions of 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 constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Buyer shall immediately notify the City.

8.20. *Notification of Prohibition on Contributions.* Through its execution of this Agreement, Buyer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Buyer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Buyer further acknowledges that the (i) prohibition on contributions applies to each Buyer; each member of Buyer's board of directors, and Buyer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Grantee is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Buyer certifies that Buyer has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

8.21. *Sunshine Ordinance.* Buyer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Buyer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

8.22. *Tropical Hardwood and Virgin Redwood Ban.* The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

8.23. *Local Hire and Prevailing Wage Requirements.* Buyer understands and agrees to abide by the terms and conditions of the City's Local Hire and Prevailing Wage Requirements as set forth *Exhibit E*.

8.24. *Approvals.* Notwithstanding anything to the contrary contained in this Agreement, Buyer acknowledges and agrees that no officer or employee of City has authority to commit City to this Agreement unless and until a Resolution of City's Board of Supervisors shall have been duly enacted approving this Agreement and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon the due enactment of such a Resolution, and this Agreement shall be null and void if City's Board of Supervisors and Mayor do not approve this Agreement in their respective sole discretion.

Approval of the transactions contemplated hereby by any department, commission or agency of City shall not be deemed to imply that such Resolution will be enacted nor will any such approval create any binding obligations on City.

8.25. *Effective Date; Termination.* The Effective Date of this Agreement is the date of City's execution as shown below. This Agreement is expressly conditioned upon the Governor's execution of the Exchange Agreement; if the Governor does not sign the Exchange Agreement, this Agreement will not become operative. Notwithstanding anything to the contrary in this Agreement, the Cole Trust acknowledges and agrees that City has no obligation to execute this Agreement until and unless (i) the Port Commission, Board of Supervisors and State Lands make the findings and/or take the necessary actions to duly approve this Agreement as described in ***Recitals H and I*** above; (ii) the Board of Supervisors and the Port Commission approve the Exchange Agreement and Settlement Agreement; (iii) State Lands approves the Exchange Agreement as described in ***Recital I***; (iv) the Cole Trust executes this Agreement, the Exchange Agreement and the Final Settlement Agreement; and (v) any default of the Cole Trust under the Initial Settlement Agreement is cured.

Further, notwithstanding anything to the contrary in this Agreement, the Sale Agreement or the Exchange Agreement, this Agreement shall automatically terminate and be of no further force and effect if the Closing Date does not occur by the Outside Date.

[SIGNATURES ON FOLLOWING PAGE]

The parties have duly executed this Agreement as of the respective dates written below.

2006 MURRAY G. AND DORIS M. COLE REVOCABLE TRUST

PORT: CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation, operating by and through the San Francisco Port Commission

By: _____
Murray G. Cole, Trustee
Date: _____

By: _____
Elaine Forbes
Executive Director

By: _____
Doris M. Cole, Trustee
Date: _____

Date: _____

APPROVED AS TO FORM:
George P. Eshoo, Esq.
Attorney for **2006 MURRAY G. AND DORIS M. COLE REVOCABLE TRUST**

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
George P. Eshoo, Esq.

By: _____
Rona H. Sandler
Deputy City Attorney

Date: _____

EXHIBIT A
VICINITY MAP

EXHIBIT B

PROPERTY LEGAL DESCRIPTION AND MAP

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

[NOTE: DESCRIPTION TO COME FROM SURVEY AND TITLE REPORT]

EXHIBIT C

FORM OF QUITCLAIM DEED

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

Attn: _____

Address: _____

(Space above this line reserved for Recorder's use only)

Block _____, Lot _____

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:

QUITCLAIM DEED

(1650 Davidson Avenue (a portion))

APN:5215-022 (a portion)

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation ("City"), pursuant to Resolution No. _____, adopted by the Board of Supervisors on _____, 20____ and approved by the Mayor on _____, 20____, hereby RELEASES, REMISES AND QUITCLAIMS to

_____, any and all right, title and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit 1 attached hereto and made a part hereof.

Executed as of this _____ day of _____, 20__.

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

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Rona H. Sandler
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: _____
[NAME]
City Engineer

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)

**EXHIBIT 1 TO EXHIBIT C
LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF SB 815 PARCEL**

EXHIBIT D**100- YEAR STORM FLOOD RISK TRANSFER DISCLOSURE STATEMENT**

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS A PORTION OF FORMER CUSTER AVENUE. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH ORDINANCE NO. 181108, CODIFIED AS ARTICLE 51 OF THE SAN FRANCISCO POLICE CODE. IT IS NOT A WARRANTY OF ANY KIND BY THE CITY OR ITS AGENTS, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE BUYER MAY WISH TO OBTAIN.

I

The City discloses the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to purchase, rent, or lease the subject property. City hereby authorizes any agent(s) representing any transferee in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated transfer (including any sale or lease) of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE CITY AS REQUIRED BY THE CITY AND COUNTY OF SAN FRANCISCO AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE CITY AND TRANSFEREE.

The City and County of San Francisco recognizes that it is in the public interest to ensure that persons who own properties at risk of flooding have information about their flood risk so they can take steps to mitigate the risk, such as flood-proofing their property or purchasing flood insurance. It is also in the public interest to ensure that before persons purchase, rent, or lease real property they have notice regarding the stormwater flood risk to their property. Mandatory disclosure before sale, rent, or lease is an effective tool for ensuring that transferees (including buyers and tenants) of real property in San Francisco have access to this important information.

Accordingly, the San Francisco Public Utilities Commission has adopted the 100-Year - Storm Flood Risk Map. The above-described property is located in a “100-year storm flood risk zone” as shown on the 100-Year Storm Flood Risk Map. Accordingly, the property may be subject to deep and contiguous flooding during a 100-year storm event due to stormwater flow and drainage, and you may experience inconveniences, costs, and governmental requirements related to that flooding. A 100-year storm event means a storm that has a 1% probability of occurring at a particular location in a given year.

If the property is in a “100-year storm flood risk zone” as shown on the 100-Year Storm Flood Risk Map, that does not mean the property is subject to flooding only during a 100-year storm event. The property may also flood at other times and from other causes.

The 100-Year Storm Flood Risk Map shows only areas subject to flood risk in a 100-year storm event due to precipitation and related stormwater runoff. It does not show all areas of San Francisco that are subject to flood risk due to inundation, storm surge, high tides, stormwater systems blockages, or other causes of flooding, and should not be relied upon to provide a complete assessment of a property's risk of flooding.

The 100-Year Storm Flood Risk Map may be found at <https://sfpuc.org/learning/emergency-preparedness/flood-maps> and is on file with the San Francisco Public Utilities Commission at 525 Golden Gate Avenue, San Francisco, CA 94102. For additional information pertaining to this disclosure and the 100-Year Storm Flood Risk Map, please contact the San Francisco Public Utilities Commission at RainReadySF@sfgwater.org or (415) 695-7326.

The person signing below on behalf of the City certifies that the information in this disclosure is true and correct to the best of such person's knowledge as of the date below.

City and County of San Francisco,
a charter city and municipal corporation

By: _____

Print Name: _____

Print Title: _____

Date _____

II

TRANSFeree MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Transferee _____ *Date* _____

Transferee _____ *Date* _____

Agent (Broker Representing Buyer) _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker-Signature)

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

EXHIBIT E**LOCAL HIRING AND PREVAILING WAGE REQUIREMENTS AND PROJECT DECLARATION**

(a) Any undefined, initially-capitalized term used in this *Exhibit E* shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If Buyer uses the Property for the construction, rehabilitation or expansion of three (3) or more residential units (a “**Housing Project**”), the requirements of San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”) will apply to the Housing Project. Buyer shall contact City’s Office of Economic Workforce and Development (“**OEWD**”) before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Local Hiring Requirements.

(b) For a Housing Project, Buyer shall include, and shall require its Contractors and Subcontractors to include, a requirement to comply with the Local Hiring Requirements in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.62. Each such Construction Contract shall name the City and County of San Francisco as a third-party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Buyer shall cooperate, and require its Contractors and Subcontractors to cooperate, with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Local Hiring Requirements when required. Buyer’s failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. In addition, City shall have the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party (i.e., Buyer, a Contractor, or a Subcontractor, as applicable).

(c) Any undefined, initially-capitalized term used in this *Exhibit E* shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If Buyer uses the Property for the construction of a Housing Project that will exceed the Threshold Amount, Buyer shall, and shall require its Contractors and Subcontractors to, comply with the applicable requirements in San Francisco Administrative Code Section 23.61, including, but not limited to, (1) paying workers performing such work not less than the Prevailing Rate of Wages, (2) providing the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, (3) complying with certain record keeping, posting, and audit requirements, such as maintaining weekly certified payroll records and submitting them to the City’s Office of Labor Standard Enforcement (“**OLSE**”) on request, and (4) employing Apprentices (collectively, “**Prevailing Wage Requirements**”). Buyer agrees to cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

(d) Buyer shall contact, and shall require its Contractors and Subcontractors to contact, OLSE before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Prevailing Wage Requirements, including the electronic submission of certified payroll records if mutually acceptable to OLSE and the applicable party (i.e., Buyer, Contractor, or Subcontractor, as applicable).

(e) Buyer shall include, and shall require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any

Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Buyer’s failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. A Contractor’s or Subcontractor’s failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Rate of Prevailing Wages, see www.sfgov.org/olse/prevailingwages or call OLSE at 415-554-6235.

(f) At Closing, Buyer shall record against the Property in the Official Records a declaration in the form attached as **Attachment 1** (the “**Project Declaration**”). On Buyer’s receipt of a final certificate of occupancy for a Housing Project (a “**Completion Certificate**”), Buyer shall deliver a copy of the Completion Certificate to OEWD and OLSE, together with any documents or material not previously delivered to confirm Buyer’s satisfaction of the Local Hiring Requirements and the Prevailing Wage Requirements. The Project Declaration shall automatically terminate on the fourth (4th) anniversary of the date of the Completion Certificate. If Buyer decides to build something other than a Housing Project on the Property, receives a final certificate of occupancy for such alternative project, and delivers a copy of such certificate to City’s Director of Property, City’s Director of Property shall execute and deliver to Buyer a release of the Project Declaration in the form attached as **Attachment 2** to the Project Declaration (the “**Release of Declaration**”). The Project Declaration shall continue and remain in full force and effect at all times with respect to the Property until the earlier to occur of the fourth (4th) anniversary of the date of the Completion Certificate and the date that OEWD delivers the Release of Declaration to Buyer.

Attachment 1	Form of Project Declaration
Attachment 2	Form of Release of Declaration

ATTACHMENT 1 to EXHIBIT E

Form of Project Declaration

WHEN RECORDED MAIL TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

Attn:

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

1650 Davidson Avenue (a portion)
APN: _5215-022 (a portion)

DECLARATION OF PROJECT WORK COVENANTS

()

This Declaration of Project Work Covenants ("Declaration") is made as of _____, 20____, by _____, a _____ ("Declarant"), in favor of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

RECITALS

A. Declarant owns an approximately 2,364 square foot piece of real property in the City and County of San Francisco described and depicted in the attached Exhibit A (the "Former City Property"), which was the subject of a title dispute between Declarant and City immediately prior to the recordation of this Declaration in the Official Records of San Francisco.

B. Subject to applicable law, including without limitation the San Francisco Planning Code and Zoning Map, Declarant may develop a mixed-use project on the Former City Property (the "Declarant Project"), which may include residential use. Under San Francisco Administrative Code Section 23.62, if the Former City Property is sold for the construction, rehabilitation or expansion of three (3) or more residential units (a "Housing Project"), the Local Hiring Requirements (as defined in Section 1 below) will apply to the construction of the Housing Project, and if the estimated project cost of the Housing Project will exceed the Threshold Amount (as defined in San Francisco Administrative Code Section 23.61), the Prevailing Wage Requirements (as defined in Section 2 below) will apply to the construction of the Housing Project.

C. As a condition of resolving the title dispute including purchase of the Former City Property by Declarant, Declarant agreed to enter into this Declaration in its capacity as owner of the Former City Property to provide the terms and conditions for such requirements.

AGREEMENT

Now, therefore, in consideration of the City's conveyance of the Former City Property, Declarant agrees as follows:

1. Local Hiring Requirements. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If Declarant uses the Former City Property for the construction, rehabilitation or expansion of a Housing Project, Declarant acknowledges the requirements of San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”) will apply to the Housing Project. Declarant shall contact City’s Office of Economic Workforce and Development (“**OEWD**”) before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Local Hiring Requirements.

For a Housing Project, Declarant shall include, and shall require its Contractors and Subcontractors to include, a requirement to comply with the Local Hiring Requirements in any construction contract with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Declarant shall cooperate, and require its Contractors and Subcontractors to cooperate, with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Local Hiring Requirements when required. Declarant’s failure to comply with its obligations under this Section shall constitute a material breach of this Declaration. In addition, City shall have the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party (i.e., Declarant, a Contractor, or a Subcontractor, as applicable).

2. Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If Declarant uses the Former City Property for the construction of a Housing Project and the estimated project cost of the Housing Project exceeds the Threshold Amount, Declarant shall, and shall require its Contractors and Subcontractors to, comply with the applicable requirements in San Francisco Administrative Code Section 23.61, including, but not limited to, (1) paying workers performing such work not less than the Prevailing Rate of Wages, (2) providing the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, (3) complying with certain record keeping, posting, and audit requirements, such as maintaining weekly certified payroll records and submitting them to the City’s Office of Labor Standard Enforcement (“**OLSE**”) on request, and (4) employing Apprentices (collectively, “**Prevailing Wage Requirements**”). Declarant agrees to cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Declarant shall contact, and shall require its Contractors and Subcontractors to contact, OLSE before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Prevailing Wage Requirements, including the electronic submission of certified payroll records if mutually acceptable to OLSE and the applicable party (i.e., Declarant, Contractor, or Subcontractor, as applicable). Declarant shall include, and shall require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions

in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Declarant's failure to comply with its obligations under this Section shall constitute a material breach of this Declaration. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Rate of Prevailing Wages, see www.sfgov.org/olse/prevailingwages or call OLSE at 415-554-6235.

3. **Enforcement.** City, but not the general public, may, in its sole discretion, rely on this Declaration to enforce any of the covenants hereunder in addition to any other rights and remedies available to City at law or in equity, including, but not limited to, City's rights under the San Francisco Administrative Code. City shall have the right, but not the obligation, to enforce the Local Hiring Requirements and the Prevailing Wage Requirements and to assess penalties for noncompliance in the amounts specified in San Francisco Administrative Code Sections 23.61 and 23.62. Accordingly, City may sue for and obtain an injunction for specific performance to prevent the breach of or to enforce the observance of the Local Hiring Requirements and the Prevailing Wage Requirements, as well as to pursue any additional rights or remedies available at law or in equity. All rights and remedies available to City under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy. If there is any breach of the covenants hereunder, City shall be entitled to recover all attorneys' fees and costs in connection with City's enforcement activities and actions.

Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, nor shall it give rights to any party other than the City. Without limiting the foregoing, nothing herein creates a private right of action by any person or entity other than the City. City's failure to enforce any of the restrictions set forth in this Declaration at the time of its violation shall in no event be deemed a waiver of a right to do so subsequently.

4. **Binding on Successors; No Merger.** This Declaration and the covenants and restrictions set forth herein constitute restrictions and covenants running with the land and shall bind and burden Declarant, in its capacity as owner of the Former City Property, and any successor owner or occupier of the Former City Property (each, a "**Successor Owner**").

5. **Priority of Lien.** No violation or breach of any provision of this Declaration shall impair, defeat or invalidate the lien of any senior encumbrance, but all provisions hereof shall thereafter be binding upon and effective against any Successor Owner whose title is derived through foreclosure of any encumbrance or acceptance of any deed in lieu of foreclosure.

6. **No Waiver.** No waiver by City of any violation under this Declaration shall be effective or binding unless and to the extent expressly made in writing by City, and no such waiver may be implied from any failure by City to take action with respect to such violation. No express written waiver of any violation shall constitute a waiver of any subsequent violation in the performance of the same or any other provision of this Declaration.

7. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law, the validity of all remaining provisions shall remain unaffected and in full force and effect.

8. Nature and Purpose of Covenants; Run with the Land. The Local Hiring Requirements and the Prevailing Wage Requirements are for the burden of the Property, Declarant, and each Successor Owner and for the benefit of City. All of such covenants and restrictions are intended to be and are hereby declared to be covenants running with the land pursuant to California Civil Code Section 1460 *et seq.* Declarant and each Successor Owner (excluding any governmental agency), by accepting fee title to some or all of the Former City Property, agrees to be bound by and subject to all of the restrictions, covenants, and limitations set forth in this Declaration.

9. Duration; Release of Declaration. On Declarant's receipt of a final certificate of occupancy for a Housing Project (a "**Completion Certificate**"), Declarant shall deliver a copy of the Completion Certificate to OEWD and OLSE, together with any documents or material not previously delivered to confirm Declarant's satisfaction of the Local Hiring Requirements and the Prevailing Wage Requirements. This Declaration shall automatically terminate on the fourth (4th) anniversary of the date of the Completion Certificate. If Declarant decides to build something other than a Housing Project on the Former City Property, receives a final certificate of occupancy for such alternative project, and delivers a copy of such certificate to City's Director of Property, City's Director of Property shall execute and deliver to Declarant a release of the Project Declaration in the form attached as Exhibit B (the "**Release of Declaration**"). This Declaration shall continue and remain in full force and effect at all times with respect to the Former City Property until the earlier date (the "**Termination Date**") to occur of (a) the fourth (4th) anniversary of the date of the Completion Certificate and (b) the date that OEWD delivers the Release of Declaration to Declarant. At Declarant's request, City shall execute any reasonable documentation required to remove the lien of this Declaration from the Former City Property after the Termination Date.

10. Release, Waiver and Indemnification. Neither the City nor any of its commissions, departments, boards, officers, agents or employees (collectively, the "**City Parties**") shall be liable for any breach of any of the Local Hiring Requirements or the Prevailing Wage Requirements, for the failure to monitor or enforce any of the Local Hiring Requirements or the Prevailing Wage Requirements, or for any matter relating to this Declaration or the construction or development of any project at the Former City Property (collectively, the "**Released Matters**"). Declarant, on its own behalf and on behalf of its successors in interest to the Former City Property, fully RELEASES, WAIVES AND DISCHARGES forever any and all claims against, and covenants not to sue, the City Parties for anything arising from or relating to the Released Matters. Declarant acknowledges that the releases contained herein includes all known and unknown, direct and indirect, disclosed and undisclosed, and anticipated and unanticipated claims. The foregoing waiver, release and indemnification shall survive any expiration or termination of this Declaration.

11. Severability. Should the application of any provision of this Declaration to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Declaration shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Declarant and shall be reformed to the extent necessary to make such provision valid and enforceable.

12. No Joint Venturers or Partnership; No Authorization. This Declaration does not create a partnership or joint venture between City, Declarant or any Successor Owner as to any activity conducted by Declarant or any Successor Owner in connection with a Housing Project or

otherwise at the Former City Property. Neither Declarant nor any Successor Owner shall be deemed a state actor with respect to any activity conducted by such party on, in, around or under the Former City Property.

13. General Provisions. (a) This Declaration may be amended or modified only by a writing signed by the City and Declarant or any Successor Owner. (b) No waiver by City of any of the provisions of this Declaration shall be effective unless in writing and signed by City, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Declaration. (c) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the City's Labor Standards Enforcement Officer or his or her designee with respect to the Prevailing Wage Requirements, and the Director of OEWD or his or her designee with respect to the Local Hire Requirements. (d) This Declaration contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Declaration are for convenience of reference only and shall be disregarded in the interpretation of this Declaration. (f) Time is of the essence in each and every provision hereof. (g) This Declaration shall be governed by and construed in accordance with California law. (h) If Declarant, any Successor Owner, or City commences an action or a dispute arises under this Declaration, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of the City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the City's use of its own attorneys. (i) If any Successor Owner consists of more than one person or entity, then the obligations of each such person or entity shall be joint and several.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

DECLARANT:

_____,
a _____

By: _____
Name: _____
Title: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
[Name]
Director of Property

Date: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
[Name]
Deputy City Attorney

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)

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ATTACHMENT 2 to EXHIBIT E

Form of Release of Declaration

WHEN RECORDED MAIL TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

Attn: _____

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

APN: _____

TERMINATION OF PROJECT WORK COVENANTS

(_____)

This Termination of Project Work Covenants (“**Termination**”) is made as of _____, 20____, by the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”).

A. Pursuant to a Quitclaim Deed recorded in the Official Records of San Francisco County on _____ as Document No. _____, City sold certain real property in the City and County of San Francisco described in the attached **Exhibit A** (the “**Former City Property**”) to _____, a _____ (“**Buyer**”).

B. At the time Buyer acquired the Former City Property from City, Buyer intended to use the Former City Property to _____.

C. As further described in that certain Declaration of Project Work Covenants recorded in the Official Records of San Francisco County on _____ as Document No. _____ (the “**Declaration**”), if the Former City Property was sold for the construction, rehabilitation or expansion of three (3) or more residential units (a “**Housing Project**”), the requirements of San Francisco Administrative Code Section 23.62 would apply to the Housing Project, and if the estimated project cost of the Housing Project exceeded the Threshold Amount (as defined in San Francisco Administrative Code Section 23.61), the requirements of San Francisco Administrative Code Section 23.61 would apply to the Housing Project.

D. As a condition of selling the Former City Property to Buyer, Buyer agreed to enter into the Declaration.

E. Buyer or its successor in interest to the Former City Property used the Former City Property for the construction of a non- Housing Project development, and City agrees the Declaration is terminated in its entirety.

F. This Termination shall bind and inure to the benefit of the parties and their respective heirs, successors, and permitted assigns.

IN WITNESS WHEREOF, City has executed this Termination of Project Work Covenants as of the day and year first above written.

CITY: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
[Name]
Director of Property

Date: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Deputy City Attorney

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)

EXHIBIT A

Legal Description of Former City Property