

AGREEMENT FOR THE SETTLEMENT OF A DISPUTE
RELATING TO LAND WITHIN THE HUMBOLDT BAY AREA
(COMMERCIAL-K STREETS AREA, CITY OF EUREKA)

This Agreement is made by and between the City of Eureka ("City"), the State of California, acting by and through the State Lands Commission ("State"), and the private landowners listed in Exhibit A attached hereto ("private owners").

PART 1: NATURE OF SETTLEMENT AGREEMENT

1.1 There are presently pending in the Superior Court of the State of California for the County of Humboldt sixteen (16) actions listed in Exhibit B attached hereto in which the parties to this Agreement are litigating their respective competing claims to various parcels of land which comprise that portion of the Eureka City Waterfront extending from Commercial Street to a point approximately 100 feet easterly of the prolongation of the east line of K Street except for that portion of such waterfront between the prolongations of the east line of G Street and the west line of I Street ("Settlement Area").

1.2 The contentions of the parties are based upon a series of events commencing in 1850 and continuing until the present time. The litigation, part of which has been under way since 1968, has cost many hundreds of thousands of dollars to public and private litigants and has added considerably to the burdens of the Superior Court.

1.3 Twelve (12) of these actions involve property in that portion of the Settlement Area located between A Street and said point easterly of K Street: Actions Nos. 47777, 47778, 47779, 47780, 52623, 52624, 52627, 52654, 52925, 52926, 52927 and 53094. Trial of the first, or title, phase of these 12 actions, which were consolidated for trial, took place in 1976. On July 18, 1977, the Court signed Findings of Fact and Conclusions of Law for the first phase, which are contained in the Clerk's files in actions consolidated with Action No. 47780, and which provide that "[t]he Court expressly reserves jurisdiction to add to, delete from, or modify these Findings of Fact and Conclusions of Law until a Judgment . . . is signed and filed."

1.4 Trial of the second, or engineering, phase of these 12 A-K Streets actions took place in 1978, and closing arguments were heard on February 26, 27 and 28, 1979. The Court has deferred ruling on the matters at issue in the second phase pending possible settlement of the litigation.

1.5 The four remaining actions relate to that portion of the Settlement Area located between Commercial and A Streets and involve the proposed westerly extension of First Street: Actions Nos. 53526, 58617, 58877 and 59661. No trial has been held as to these four actions or with respect to the issues in Action No. 52627 relating to property westerly of the prolongation of A Street.

1.6 Counsel for the parties have estimated that completion of the trial of the A-K Streets actions and the trial of the Commercial-A Streets actions would require two or three additional years, and that appellate proceedings would require an equal amount of time.

1.7 It is in the public interest, and consistent with the purpose of the public trust for commerce, navigation and fisheries, that the subject litigation be compromised and settled and that titles, both public and private, be cleared and the parties permitted to proceed with long-deferred plans for improvement of the Settlement Area.

1.8 It is also in the public interest that there shall be a single and entire settlement with respect to all of those parties and properties described herein for the following reasons:

A. Common questions of fact and law pertain to some of the issues of title to and boundaries of all of the parcels in the Settlement Area, and settlement as to fewer than all parcels will not significantly reduce the burden of litigation upon the City, the State, the remaining private litigants or the courts.

B. Public and private improvements within the Settlement Area can be most beneficially accomplished if the entire area can be freed of the litigation and controversy which has prevented or interfered with the obtaining of grants and financing.

C. Both public and private interests recognize the need to establish a single continuous waterfront line marking the boundary between public and private ownership in the Settlement Area.

D. The establishment of a single continuous waterfront line will promote and be consistent with the public trust for commerce, navigation and fisheries in that it (1) will protect and enhance the use of the waters northerly or bayward of such line for trust purposes and (2) will enable property southerly or landward thereof to be developed for commercial and related purposes which will significantly benefit the City and the State.

PART 2: FORMAT FOR SETTLEMENT

2.1 The parties intend to resolve the remaining issues in litigation in the 12 A-K Streets actions by entering into Stipulations for Entry of Judgments and Stipulated Findings of Fact and Conclusions of Law consistent with this Agreement and with the Findings of Fact and Conclusions of Law signed and filed after the first phase of the trial of those actions, and to request that the Court make its Judgments accordingly. The parties also intend to resolve the four Commercial-A Streets actions by entering into Stipulations for Entry of Judgment and Stipulated Findings of Fact and Conclusions of Law, and to request that the Court make its Judgments accordingly. The proposed settlement also includes quitclaims of various parcels by the City, the State and private owners, the conveyance of other parcels by private owners to the City for the extension of First Street and the City's purchase of certain lands from private owners.

2.2 The Legislature of the State of California, to facilitate the compromise, settlement and adjustment of title and boundary disputes along the Eureka City Waterfront, enacted Chapter 1085, Statutes of 1970, which authorizes the City, with the approval of the State Lands Commission, to sell, exchange, quitclaim and convey certain lands and to settle any title and boundary disputes by agreement, exchange or quitclaim, and to remove or provide for the removal of the

public trust for commerce, navigation and fisheries from portions of said lands which are no longer necessary or useful for commerce, navigation or fisheries nor for such uses, trusts, conditions and restrictions as are or have been imposed by statutory grants of tide and submerged lands to the City, referred to in Section 3.1 hereof.

2.3 In addition to said Chapter 1085, the City and the State may resolve uncertainties as to tidelands boundaries by entering into boundary line agreements and land exchanges under the authority of Muchenberger v. City of Santa Monica (1929) 206 Cal. 635, as reaffirmed in City of Long Beach v. Mansell (1970) 3 Cal.3d 462. The State is also authorized by Public Resources Code Section 6307 to exchange lands "[w]henver it appears to the [State Lands Commission] to be in the best interests of the state, . . ."

PART 3: PARTIES' CLAIMED OWNERSHIP INTERESTS

3.1 The City contends that it holds title to tide and submerged lands in trust by virtue of Chapter 82, Statutes of 1857; Chapter 438, Statutes of 1915; Chapter 187, Statutes of 1927; Chapter 225, Statutes of 1945, and Chapter 1086, Statutes of 1970, as amended, subject to the uses, trusts, conditions and restrictions as are or have been imposed by such statutory grants of tide and submerged lands to the City, and that the City is trustee of the public trust for commerce, navigation and fisheries encumbering such lands.

3.2 The State contends that it is the owner of the reversionary interest in said tide and submerged lands granted in trust to the City.

3.3 The private owners contend that, in general, they hold title (in fee simple absolute) to lands southerly or landward of the United States pierhead line, as depicted on the United States Army Corps of Engineers' Harbor Lines Map No. 5-4-8, dated August 1, 1957, by virtue of various conveyances made by the State of California and the City of Eureka more than 100 years ago and continuous chains of conveyances extending to the present time, and that they and their predecessors in interest have paid taxes and possessed such lands throughout the years. The private owners contend that such lands have been freed from the public trust for commerce, navigation and fisheries by the actions of the City and the State. A map depicting the approximate locations of pre-settlement record descriptions of the private owners' parcels is attached hereto as Exhibit C for illustrative purposes only.

PART 4: ESTABLISHMENT OF AGREED WATERFRONT BOUNDARY LINE

4.1 While the parties agree that portions of the Settlement Area were tide and submerged lands in their last natural condition, they do not agree as to the extent, amount and location of such lands.

4.2 Subject to the official approvals by the Eureka City Council, the State Lands Commission and the Governor as required in Parts 14 and 15 hereof, the parties intend to resolve the existing uncertainty as to the waterfront boundary line between public and private lands in the Settlement Area as follows:

A. The boundary between public and private lands in that portion of the Settlement Area located from the westerly line of the property at issue in Action No. 58617 ("the Davenport parcel") easterly to a point approximately forty (40) feet east of the westerly line of the property at issue in Action No. 47779 ("the Cincotta parcel") shall be in approximately the location of the line depicted as the "Settlement Line" upon the map attached hereto as Exhibit C for illustrative purposes only. The precise location of said boundary in said portion of the Settlement Area shall be determined, described and mapped in accordance with Section 4.3 hereof.

B. The boundary between public and private lands in that portion of the Settlement Area located from said point in the Cincotta parcel referred to in Subparagraph A

hereinabove easterly to the easterly line of the property at issue in Action No. 52926 ("the Eureka Fisheries parcel"), except for that portion of the Eureka City Waterfront between the prolongations of the east line of G Street and the west line of I Street, shall be the United States bulkhead line, as depicted on the United States Army Corps of Engineers' Harbor Lines Map No. 5-4-8, dated August 1, 1957.

C. Because of the City's intention to purchase all of the property at issue in Action No. 53526 ("the Norcoast parcel"), as set forth in Section 10.1 hereof, the parties do not intend by this Agreement to establish a waterfront boundary line in that portion of the Settlement Area located between the east line of Commercial Street and the westerly line of said Davenport parcel.

D. Because of the City's intention to purchase a portion of the property at issue in Action No. 52624 ("the Kaiser parcel"), as set forth in Section 10.2 hereof, the parties do not intend by this Agreement to establish a waterfront boundary line in that portion of the Settlement Area located between the prolongation of the west line of J Street and a point approximately 100 feet easterly of the prolongation of the east line of K Street.

4.3 A survey of the Settlement Area in accordance with the following guidelines and deadline shall be made by a surveyor or engineer designated by agreement of the

parties:

A. The surveyor or engineer shall survey and prepare legal descriptions of (1) the present line of mean high water; (2) the agreed waterfront boundary line referred to in Section 4.2 hereof; (3) the parcels to be quitclaimed by the private owners to the City pursuant to Part 7 hereof; (4) the parcels to be quitclaimed by the City and the State to private owners pursuant to Part 8 hereof; (5) the parcels to be conveyed by certain private owners to the City for the extension of First Street pursuant to Part 9 hereof; and (6) the portion of the Kaiser parcel to be acquired by the City pursuant to Section 10.2 hereof. Such legal descriptions may be by reference to the map referred to in Subparagraph B hereinbelow.

B. The surveyor or engineer shall prepare a map depicting those items in Subparagraph A hereinabove and tying them to existing monuments of record. In preparing such map, he may utilize the most recent cadastral survey meeting the approval of all of the parties.

C. The survey, including the preparation of such map, shall be completed on or before July 31, 1980.

D. Plot plans are to be prepared for each of the parcels of land to be leased in accordance with Part 12 hereof depicting the location of presently existing wharves, docks, piers, structures and other improvements

lying northerly and bayward of said agreed waterfront boundary line. Such plot plans shall be prepared in a manner to be agreed upon by the parties, and shall be attached to the waterfront leases as provided in Section 4.1 of the form of lease attached hereto as Exhibit D. Such plot plans shall be completed no later than the close of escrow as provided in Part 17 hereof.

E. The City shall bear one-half of the total cost of the survey and the preparation of the map and the leased area plot plans referred to hereinabove, and the private owners shall bear the other half.

PART 5: PUBLIC TRUST EASEMENT

5.1 Subject to the official approvals by the Eureka City Council, the State Lands Commission and the Governor as required in Parts 14 and 15 hereof, it is the intention of the parties to clarify the existing uncertainty as to the extent of the lands in the Settlement Area subject to the public trust for commerce, navigation and fisheries.

5.2 Consequently, it is intended that the private lands located southerly or landward of the agreed waterfront boundary line described in Part 4 hereof shall be freed of the public trust easement, except that any portion of such lands lying northerly or bayward of the present line of mean high water, as surveyed in accordance with Section 4.3 hereof, shall remain subject to the public trust easement so long as such portion is periodically covered and uncovered by the ebb and flow of the tide.

5.3 It is further intended, however, that, subject to the limitations set forth in Sections 6.2, 6.3, 6.4, 6.5, 8.3 and 8.4 hereof, the public trust easement shall be terminated in the future as to any such portion of the private lands lying landward or southerly of the agreed waterfront boundary line described in Part 4 hereof, and bayward or northerly of said present line of mean high water, as surveyed in accordance with Section 4.3 hereof, which lands may be lawfully bulkheaded and filled as provided in Part 6 hereof.

PART 6: ESTABLISHMENT OF BULKHEAD LINE

6.1 The parties deem it desirable and in the interest of the public that a continuous bulkhead be constructed along the Settlement Area waterfront. While this Agreement does not create any obligation to construct such a continuous bulkhead, it is agreed and understood that, subject to the conditions set forth in this Agreement, the private owners, except for those listed in the following sentence of this section, may, at such private owners' option, construct such bulkheads and place fill in the most northerly or bayward portions of their respective parcels lying between the agreed waterfront boundary line described in Part 4 hereof and the present line of mean high water, as surveyed in accordance with Section 4.3 hereof. This right shall not apply to Keenan Investment Company, Kaiser Cement Corporation, Norcoast Fisheries Development, Inc., and Lena Grace Christensen and Jack Wells, and each such private owner, and such owners' assigns, heirs and successors in interest, and each of them; provided, however, that this limitation shall not be binding upon the State and the City, or any successor to the City as the trustee of the public trust for commerce, navigation and fisheries.

6.2 The right of such private owners referred to in Section 6.1 hereof, except for Coast Oyster Company ("Coast Oyster"), to construct bulkheads and to place fill is limited as follows:

A. In any of the subject parcels that are not presently entirely or partially covered by buildings and non-floating docks and wharves between the agreed waterfront boundary line described in Part 4 hereof and said present line of mean high water, the construction of bulkheads and the placement of fill shall be completed within ten (10) years of the effective date of this Agreement.

B. In any of the subject parcels that are presently entirely or partially covered by buildings and non-floating docks and wharves between the agreed waterfront boundary line described in Part 4 hereof and said present line of mean high water, the construction of bulkheads and the placement of fill shall be completed within ten (10) years following removal of or substantial alterations to such improvements; subject, however, to the time limitation set forth in Section 6.4 B hereof.

6.3 The right of Coast Oyster to construct bulkheads and to place fill is limited as follows: The construction of the bulkheads and the placement of fill shall be completed within five (5) years after either (1) Coast Oyster ceases to use the presently existing barge inlet in its parcel as part of its oyster operations, or (2) Coast Oyster ceases its oyster operations, whichever event occurs earlier, subject, however, to the time limitation set forth in Section 6.5 B hereof.

6.4 The right of all such private owners referred to in Section 6.1 hereof, excluding Coast Oyster, to construct bulkheads and to place fill is further limited as follows:

A. The construction of the bulkheads and the placement of fill pursuant to this Agreement shall be in compliance with all provisions of law, and the private owners shall obtain the requisite permits and approvals from all applicable federal, State and local agencies before commencing such construction or placing such fill.

B. Such right to construct bulkheads and to place fill shall terminate no later than fifteen (15) years from the effective date of this Agreement.

6.5 The right of Coast Oyster to construct bulkheads and to place fill is further limited as follows:

A. Coast Oyster's right shall be subject to the requirements of Section 6.4 A hereof.

B. Such right to construct bulkheads and to place fill shall terminate no later than twenty-five (25) years from the effective date of this Agreement.

PART 7: RELINQUISHMENT OF PRIVATE CLAIMS

7.1 The private owners, except for those listed in the following sentence of this section, agree to quitclaim to the City, in its municipal capacity and as trustee under the public trust for commerce, navigation and fisheries, all of their respective rights, title and interests in and to all of the lands situated northerly or bayward of the agreed waterfront boundary line described in Part 4 hereof, including fill or spoil materials presently existing on all or any portion of such lands. This provision shall not apply to Keenan Investment Company, Kaiser Cement Corporation, Norcoast Fisheries Development, Inc., and Lena Christensen and Jack Wells.

7.2 Such private owners referred to in Section 7.1 hereof shall retain their respective rights, title and interests in and to all other presently existing improvements on such lands, including structures, wharves, docks and piling, for the original terms and any subsequent renewal periods of leases entered into by the City and such private owners pursuant to Part 12 hereof.

7.3 Norcoast Fisheries Development, Inc., ("Norcoast") and Kaiser Cement Corporation ("Kaiser"), and each of them, agree to quitclaim to the City, in its municipal capacity and as trustee under the public trust for commerce, navigation and fisheries, all of their respective rights, title and interests in and to all of the lands situated northerly or bayward of their northerly property lines as such lines are described in

their respective title-vesting instruments, including, but not limited to, any portion of such lands lying northerly or bayward of the United States bulkhead line, as depicted on the United States Army Corps of Engineers' Harbor Lines Map No. 5-4-8, dated August 1, 1957, and including fill or spoils materials presently existing on all or any portion of such lands.

PART 8: RELINQUISHMENT OF PUBLIC CLAIMS

8.1 Subject to the official approvals by the Eureka City Council, the State Lands Commission and the Governor as required in Parts 14 and 15 hereof, the City, in its municipal capacity and as trustee of the public trust for commerce, navigation and fisheries, and the State, in its sovereign capacity and as the owner of the reversionary interest in tide and submerged lands granted in trust to the City, agree, pursuant to and in accordance with Sections 5.2 and 5.3, and as modified by Section 8.4 and Part 9 hereof, to quitclaim to the respective private owners, except for Kaiser Cement Corporation and Norcoast Fisheries Development, Inc., all of the City's and the State's respective rights, title and interests in and to all of the lands within the Settlement Area situated southerly or landward of the agreed waterfront boundary line described in Part 4, excepting therefrom the City's existing First Street right-of-way.

8.2 Subject to such official approvals as required in Parts 14 and 15 hereof, the City, in its municipal capacity and as trustee of the public trust for commerce, navigation and fisheries, and the State, in its sovereign capacity and as owner of the reversionary interest in tide and submerged lands granted in trust to the City, agree to quitclaim to Kaiser Cement Corporation ("Kaiser") all of the City's and the State's respective rights, title and interests in and to all of the

lands within the non-waterfront portion of the property at issue in Action No. 52624 which is to be retained by Kaiser pursuant to the Agreement for the Purchase and Sale of Real Property, by and between Kaiser and the City, referred to in Section 10.2 hereof.

8.3 Subject to such official approvals as required in Parts 14 and 15 hereof, the City and the State agree to terminate pursuant to and in accordance with Sections 5.2 and 5.3 hereof, the public trust for commerce, navigation and fisheries as to all of such lands described in Sections 8.1 and 8.2 hereof which are landward or southerly of the present line of mean high water, as surveyed in accordance with Section 4.3 hereof, upon the execution of the quitclaim deeds contemplated by Sections 8.1 and 8.2 hereof. This provision is intended to include, but is not limited to, all of the property at issue in both Action No. 52623 ("the Keenan property") and Action No. 58877 ("the Christensen and Wells parcel") and all of the non-waterfront portion of the property at issue in Action No. 52624 ("the Kaiser parcel") remaining after the City's acquisition of the waterfront portion of said Kaiser parcel in accordance with Section 10.2 hereof.

8.4 With respect to all of the lands within the Settlement Area situated southerly or landward of the agreed waterfront boundary line described in Part 4 hereof, the City and the State shall retain their respective rights, title and

interests in and to any rights of way and easements of record for pipelines and public utilities, the public trust easement excepted in Part 5 hereof, in and to the lands to be conveyed to the City pursuant to Section 9.1 hereof, and C, that portion of D southerly of the Northwestern Pacific Railroad Company right of way, F and J Streets, notwithstanding the provisions of Sections 8.1, 8.2 and 8.3 hereof.

PART 9: CONVEYANCES OF LAND TO CITY FOR FIRST STREET EXTENSION

9.1 Robert E. Davenport, Marjorie S. Davenport, Eureka Ice & Cold Storage Company, Coast Oyster Company, Stephanie Cincotta, Lawrence Lazio and Eureka Fisheries, Inc., and each of them, agree to convey to the City their respective rights, title and interests in and to those portions of their respective parcels identified as "First Street Extension" and whose approximate location is depicted by shading on the map attached hereto as Exhibit C for illustrative purposes only, for the purpose of extending First Street in accordance with the City's General Plan. The precise location of such portions of said parcels shall be surveyed in accordance with Section 4.3 hereof.

9.2 Such private owners may maintain and use, without rental, such portions of said parcels thereby conveyed and the existing improvements presently located thereon until the earlier of the following dates: (1) one year after written notice from the City of the City's intent to construct the First Street extension, or (2) June 30, 1985; provided, however, that Eureka Fisheries, Inc., shall have such right to maintain and use the portion of the parcel conveyed by it to the City for a period of time to expire upon removal of the improvements located thereon but no later than June 30, 1985. Upon such private owners' written request, additional periods of time for such maintenance and use may be granted by the City by a written instrument.

9.3 Such private owners shall cause the existing improvements presently located upon such portions of said parcels thereby conveyed, except for fill or spoil materials, to be removed from such portions of said parcels on or before such date or the expiration of such extension periods at such private owners' expense.

9.4 Such private owners hereby waive all claims for severance and relocation costs against the City; provided, however, that the City agrees to pay Coast Oyster Company ("Coast Oyster") Forty Thousand Dollars (\$40,000) on or before the date of possession, the date construction commences, or June 30, 1985, whichever first occurs, as compensation for severance damage to Coast Oyster's remaining property occasioned by its conveyance to the City of a portion of Coast Oyster's parcel, the approximate location of which portion is depicted by shading on the map attached hereto as Exhibit C for illustrative purposes only.

9.5 In lieu of severance damage to Eureka Ice & Cold Storage Company, City agrees that any sidewalk constructed within the easterly 180 feet of the right-of-way conveyed by Eureka Ice & Cold Storage Company would be constructed at approximately street grade to permit Eureka Ice & Cold Storage Company to move materials from one part of its property to another by means of forklifts or similar means of conveyance. City shall also restrict parking within said area. It is understood some deviations from street grade will be required to control drainage. This restriction on City's use of the

right-of-way shall cease at such time as the existing building is removed or substantially remodeled or altered (fifty (50) percent of the value of the building at the time of remodeling or alteration) or when such use of the sidewalk area ceases for a period of time in excess of one year, whichever comes first.

PART 10: ACQUISITION OF NORCOAST PARCEL AND PORTION OF
KAISER PARCEL BY CITY

10.1 The City agrees to purchase all of the property at issue in Action No. 53526 ("the Norcoast parcel"), as shown on Exhibit C attached hereto, from Norcoast Fisheries Development, Inc. ("Norcoast") for purposes of the public trust for commerce, navigation and fisheries, and Norcoast agrees to sell its right, title and interest in and to said Norcoast parcel, subject to encumbrances of record as of the date of this Agreement acceptable to the City and further subject to proration of taxes and income, for a total cash consideration of Eighty-Five Thousand Dollars (\$85,000), which amount includes approximately Fifteen Thousand Dollars (\$15,000) as interest pursuant to a Stipulation by and between the City and Norcoast in Action No. 53526. The terms and conditions of this transaction are set forth in the Agreement for Purchase and Sale of Real Property made and entered into on _____, 1980, by and between Norcoast and the City.

10.2 The City agrees to purchase the entire waterfront portion of the property at issue in Action No. 52624 ("the Kaiser parcel"), as depicted by shading on the map attached hereto as Exhibit C for illustrative purposes only, from Kaiser Cement Corporation ("Kaiser") to a depth of sixty (60) feet landward or southerly of the United States Bulkhead

line, as depicted on the United States Army Corps of Engineers' Harbor Lines Map No. 5-4-8, dated August 1, 1957, for purposes of the public trust for commerce, navigation and fisheries, and Kaiser agrees to sell its right, title and interest in and to such waterfront portion of said Kaiser parcel, subject to encumbrances of record as of the date of this Agreement acceptable to the City and further subject to proration of taxes and income, for a total cash consideration of Ninety-Six Thousand Dollars (\$96,000). The terms and conditions of this transaction are set forth in the Agreement for Purchase and Sale of Real Property made and entered into on _____, 1980, by and between Kaiser and the City.

10.3 The funds for said purchases referred to in Sections 10.1 and 10.2 hereof shall be partially derived from the cash payments to the City provided for in Part 11 hereof.

10.4 The parties agree that the purchase by the City of the Norcoast parcel outline in Section 10.1 and the Kaiser parcel outlined in Section 10.2 are material parts of this Agreement. The settlement of the dispute outlined in this Agreement is contingent upon the consummation of the Norcoast and Kaiser purchases outlined in Section 10 hereof.

PART 11: CASH PAYMENTS TO CITY

11.1 Upon the recordation of the instruments transferring title contemplated in this Agreement, there shall be deposited into an interest-bearing escrow account in the name of the Humboldt Bay Tidelands Trust Fund by or on behalf of the private owners, the total sum of One Hundred Twenty Nine Thousand Five Hundred Dollars (\$129,500), as additional consideration for this Agreement. Said One Hundred Twenty-Nine Thousand Five Hundred Dollars (\$129,500), plus accrued interest, shall be released to the Humboldt Bay Tidelands Trust Fund upon the finality of the Judgments entered by the Court pursuant to Part 16 of this Agreement.

PART 12: WATERFRONT LEASES

12.1 The City and those private owners whose parcels adjoin the agreed waterfront boundary line described in Part 4 hereof shall enter into waterfront leases with respect to lands situated northerly or bayward of such agreed waterfront boundary line in the form and substance set forth in Exhibit D attached hereto.

PART 13: APPROVALS AS TO FORM BY COUNSEL FOR ALL PARTIES
AND EXECUTION BY PRIVATE OWNERS

13.1 The final form of this Agreement shall first be approved as to form by counsel for all parties.

13.2 The final form of this Agreement shall then be executed by all of the private owners before it is submitted to the City and the State for their official approvals.

13.3 This Agreement shall become null and void if the official approvals by the Eureka City Council, the State Lands Commission and the Governor are not provided within the time limits specified in Parts 14 and 15 hereof.

PART 14: CITY APPROVALS REQUIRED

14.1 This Agreement shall be of no force or effect unless the Eureka City Council, upon due hearing and consideration of the matter, and within thirty (30) days after full execution hereof by all of the private owners, approves this Agreement, authorizes its execution on behalf of the City, and is able to find and does find that the settlement as provided herein is in the public interest and that:

A. The settlement of the title and boundary disputes as provided herein will, among other things, (1) result in the beneficial consolidation of the City's claims of rights, title and interests, (2) permit the more effective and efficient utilization of lands within the Settlement Area for commerce, navigation and fisheries, (3) result in additional and improved public access to the waters of Humboldt Bay, and (4) provide for better public access to and through the waterfront commercial area of the City;

B. The settlement as provided herein will further the plan for the development of the waterfront of the City;

C. The settlement as provided herein will enable the parties to beneficially develop their respective lands for public and private purposes; and

D. The consideration to be received by the City in exchange for the settlement, conveyances and agreements by the City pursuant to the settlement as provided herein is

adequate and in accordance with Section 4 of Chapter 1085, Statutes of 1970.

14.2 In approving this Agreement, the Eureka City Council shall authorize counsel for the City to execute the Stipulations required by this Agreement on behalf of the City and to file the same in the Superior Court.

PART 15: STATE APPROVALS REQUIRED

15.1 This Agreement shall be of no force or effect unless the State Lands Commission, upon due hearing and consideration of the matter, and within sixty (60) days after full execution hereof by all of the private owners, approves this Agreement, authorizes its execution on behalf of the State, and is able to find and does find that the settlement as provided herein is in the public interest and that:

A. Pursuant to and in accordance with Section 2(b) of Chapter 1085, Statutes of 1970, those portions of the lands shown on Exhibit C attached hereto for illustrative purposes only, southerly or landward of the agreed waterfront boundary line which were below the line of mean high tide in their last natural condition are lands within the Humboldt Bay area which have heretofore been improved in connection with the development of the Humboldt Bay area, and in the process of such development have been filled and reclaimed, are no longer submerged or below the present line of mean high tide, and are no longer necessary or useful for commerce, navigation or fisheries, and consequently pursuant to and in accordance with Part 6 hereof, are freed of the public use and trust for commerce, navigation and fisheries and from such uses, trusts, conditions and restrictions as are or have been imposed by the statutory grants of tide and submerged lands to the City, as subsequently amended and modified, which grants are referred to in Section 1 of Chapter 1085, Statutes of 1970;

B. The settlement, conveyance and agreements by the City as provided herein are in accordance with Sections 3(b) and 6 of Chapter 1085, Statutes of 1970, and should be and are approved;

C. The consideration to be received by the City in exchange for the settlement, conveyances and agreements by the City as provided herein is adequate and in accordance with Section 4 of Chapter 1085, Statutes of 1970.

15.2 In approving this Agreement, the State Lands Commission shall authorize the Attorney General to execute the Stipulations required by this Agreement on behalf of the State and to file the same in the Superior Court.

15.3 This Agreement shall be of no force or effect unless the Governor of the State of California, after the State Lands Commission approval and the execution referred to in Section 15.1 hereof, approves this Agreement in accordance with Public Resources Code Section 6107.

PART 16: AGREEMENT EFFECTIVE UPON CONFIRMATION BY COURT

16.1 Counsel for the parties shall prepare Stipulations for Entry of Judgment and Stipulated Findings of Fact and Conclusions of Law to be submitted to the Superior Court in the 16 pending actions referred to in Sections 1.1, 1.3 and 1.5 hereof. Such Stipulations in the 12 A-K Streets actions shall refer to the evidence already presented to the Court in the 12 A-K Streets actions, and the Findings of Fact and Conclusions of Law signed and filed after the first phase of the trial of such actions, and shall set forth the existing uncertainties as to the matters being compromised and settled herein, and shall further provide for entry of Judgments consistent with this Agreement.

16.2 This Agreement shall become effective upon entry and finality of Judgments in the 16 pending actions, which Judgments shall be consistent herewith and in toto relate to all of the litigation parcels of land within the Settlement Area as defined in Section 1.1 hereof.

16.3 It is understood that the parties hereto may in the future stipulate to waive their time for appeal from such Judgments.

PART 17: ESCROW

17.1 It is the parties' intention to open an escrow with an Escrow Agent acceptable to all parties as soon as possible pursuant to escrow instructions to be prepared by counsel for all parties.

17.2 It is the parties' intention that the close of escrow shall be tentatively scheduled for no later than October 1, 1980; subject, however, to (1) this Agreement becoming effective prior thereto by fulfillment of the conditions set forth in Parts 14 and 15 and Section 16.2 hereof, and (2) the parties' subsequent agreement to provide reasonable additional time for the preparation, execution and deposit into escrow of the final form of this Agreement and the deeds, map and other documents contemplated under this Agreement.

17.3 The costs of Escrow contemplated by this Agreement shall be shared on an equal basis by the City and by the private parties, excepting the Norcoast and Kaiser purchases where the Agreement For Purchase shall govern the costs of escrow. The costs of title insurance shall be borne by the party insured, excepting the Norcoast and Kaiser purchases where the Agreement For Purchase shall govern the cost of title insurance.

PART 18: COMPROMISE

This Agreement is prepared and submitted in a bona fide effort to compromise and settle existing controversies between the private owners and the City and the State, and this Agreement does not constitute any admission by any party with respect to any lands or parties not the subject hereof, and this Agreement shall not be effective for any purpose nor shall it be offered in evidence in any action or proceeding in the event it does not become effective as provided herein.

PART 19: MISCELLANEOUS PROVISIONS

19.1 As used herein, whenever the context so requires, the neuter gender includes the masculine and the feminine, and the singular includes the plural and vice versa. Defined terms are to have their defined meaning regardless of the grammatical form, number or tense of such terms. Other terms are to have their usual meaning unless the context requires such terms to be defined as words of art.

19.2 The table of contents and the title headings of the parts of this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement nor to affect the scope or limit or qualify the meaning or intent of any provision hereof.

19.3 Time is expressly declared to be of the essence of this Agreement and applies to all times, restrictions, conditions and limitations contained herein.

19.4 All the terms, provisions and conditions hereof shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, successors and assigns of the parties hereto.

19.5 Any notice required or permitted to be given to a party hereto or to the Escrow Agent by the provisions of this Agreement shall be deemed to have been given forty-eight (48) hours after such notice is deposited in the United States mail as registered or certified mail, with postage thereon

fully prepaid, addressed to counsel for such party at the address set forth on Page 3 of Exhibit B attached hereto and by this reference made a part hereof, or to the Escrow Agent pursuant to the escrow instructions to be prepared in accordance with Part 17 hereof. Any notice given in any other fashion shall be deemed to have been given when actually received by the addressee. Any party hereto may change its address for purposes of this Agreement by giving written notice to all other parties hereto and to the Escrow Agent. A copy of all notices given by a party to another party hereto also shall be given to the Escrow Agent and said notice shall not be effective until deemed given to both the party to receive it and the Escrow Agent pursuant to the provisions of this section.

19.6 This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all of the parties to the aggregate counterparts had signed the same instrument.

19.7 The private owners, and each of them individually, covenant, warrant and represent to, with and for the benefit of the City that the person or persons executing this Agreement on behalf of such private owners has or have all necessary authority to execute, deliver and perform this Agreement and the agreements provided for herein, and no other action or approval by such private owners or other person or persons is necessary to permit such private owners to consummate the transactions contemplated hereunder or to perform their obligations under this Agreement.

19.8 This Agreement and the documents and instruments executed pursuant hereto comprise the entire understanding of the parties. By executing and accepting this Agreement, the parties hereto acknowledge that there is no other written or oral understanding by and between the parties hereto with respect to the exchanged lands and any interests therein. No modification, amendment or alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.

PART 20: EXHIBITS

20.1 The following exhibits are attached to this Agreement, and made a part hereof for all purposes by this reference.

20.2 The exhibits referred to in this part, or exhibits substituted in lieu thereof with the prior written approval of all parties hereto, shall be considered as true and correct for all purposes of this Agreement.

EXHIBIT

SUBJECT MATTER

- | | |
|---|---|
| A | List of the private owners who are parties to this Agreement |
| B | Table of the pending actions to be settled by this Agreement |
| C | Map, for illustrative purposes only, depicting (1) the pre-settlement record descriptions of the private owners' parcels, (2) the "Settlement Line" as to those parcels (3) the parcels to be conveyed to the City for the extension of First Street and (4) the parcels to be acquired by the City pursuant to Part 10 of this Agreement |
| D | Form of proposed waterfront leases from the City to the private owners |

ATTACHED TO AND MADE A PART OF THE AGREEMENT FOR THE SETTLEMENT
OF A DISPUTE RELATING TO LAND WITHIN THE HUMBOLDT BAY AREA
(COMMERCIAL-K STREETS AREA; CITY OF EUREKA)

I have read this Agreement and approved it as to form.

DATED


6/10/80

DATED

Counsel, City of Eureka

George Deukmejian, Attorney
General of the State of California

By:



Joseph C. Rusconi
Deputy Attorney General

DATED

Peter L. Townsend, Jr., Esq.

DATED

Edgar B. Washburn, Esq.

DATED

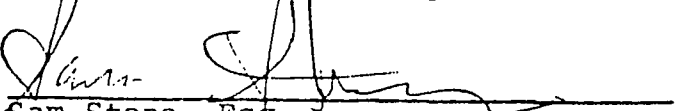
J. Michael Brown, Esq.

DATED

June 30, 1980

DATED

Victor M. Corbett, Esq.



Sam Stone, Esq.

ATTACHED TO AND MADE A PART OF THE AGREEMENT FOR THE SETTLEMENT
OF A DISPUTE RELATING TO LAND WITHIN THE HUMBOLDT BAY AREA
(COMMERCIAL - K STREETS AREA; CITY OF EUREKA)

I have read this Agreement and approve it as to form.

7/1/80
DATED

Richard D. ...
Counsel, City of Eureka

6/5/80
DATED

George Deukmejian, Attorney
General of the State of
California

By: Just C. ...
Peter L. Townsend, Esq.

DATED

Edgar B. Washburn, Esq.

DATED

DATED

J. Michael Brown, Esq.

DATED

Victor M. Corbett, Esq.

ATTACHED TO AND MADE A PART OF THE AGREEMENT FOR THE SETTLEMENT
OF A DISPUTE RELATING TO LAND WITHIN THE HUMBOLDT BAY AREA
(COMMERCIAL - K STREETS AREA; CITY OF EUREKA)

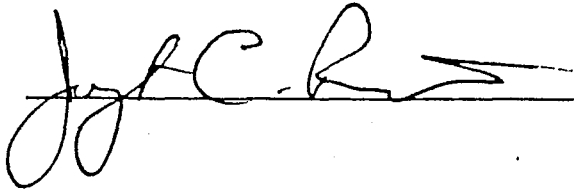
I have read this Agreement and approve it as to form.

7/1/80
DATED

Winfield D. Wilson
Counsel, City of Eureka

6/5/80
DATED

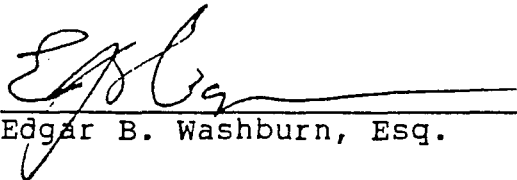
George Deukmejian, Attorney
General of the State of
California

By: 

DATED

Peter L. Townsend, Jr., Esq.

DATED


Edgar B. Washburn, Esq.

DATED

J. Michael Brown, Esq.

DATED

Victor M. Corbett, Esq.

ATTACHED TO AND MADE A PART OF THE AGREEMENT FOR THE SETTLEMENT
OF A DISPUTE RELATING TO LAND WITHIN THE HUMBOLDT BAY AREA
(COMMERCIAL - K STREETS AREA; CITY OF EUREKA)

I have read this Agreement and approve it as to form.

DATED

Counsel, City of Eureka

DATED

Jan 5, 1980

George Deukmejian, Attorney
General of the State of
California

By:

[Signature]

DATED

Peter L. Townsend, Jr., Esq.

DATED

Edgar B. Washburn, Esq.

DATED

J. Michael Brown, Esq.

DATED

June 23, 1980

[Signature]
Victor M. Corbett, Esq.

ATTACHED TO AND MADE A PART OF THE AGREEMENT FOR THE SETTLEMENT
OF A DISPUTE RELATING TO LAND WITHIN THE HUMBOLDT BAY AREA
(COMMERCIAL - K STREETS AREA; CITY OF EUREKA)

I have read this Agreement and approve it as to form.

DATED _____

Counsel, City of Eureka

DATED _____

June 5, 1980

George Deukmejian, Attorney
General of the State of
California

By: _____

[Signature]

DATED _____

Peter L. Townsend, Jr., Esq.

DATED _____

Edgar B. Washburn, Esq.

DATED _____

June 24, 1980

J. Michael Brown, Esq.

DATED _____

Victor M. Corbett, Esq.

ATTACHED TO AND MADE A PART OF THE AGREEMENT FOR THE SETTLEMENT
OF A DISPUTE RELATING TO LAND WITHIN THE HUMBOLDT BAY AREA
(COMMERCIAL - K STREETS AREA; CITY OF EUREKA)

STATE OF CALIFORNIA, acting
by and through the STATE
LANDS COMMISSION

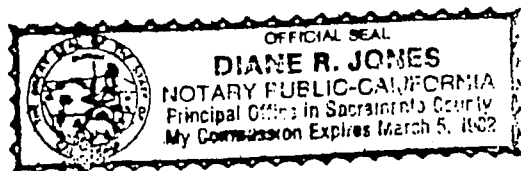
Sept 8, 1980
DATED

[Signature]

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On Sept 8, 1980, before me, the undersigned,
a Notary Public in and for said County and State, personally
appeared William F. Northrop, known to me to be the
Executive Officer of the STATE LANDS COMMISSION, STATE
OF CALIFORNIA, and known to me to be the person who executed
the within instrument on behalf of the said State Commission,
and acknowledged to me that said Commission executed the within
instrument pursuant to applicable State law and a resolution of
said Commission.

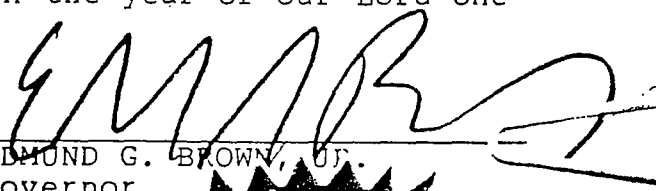
IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal on the day and year in this
certificate first above written.



[Signature]
NOTARY PUBLIC in and for
said County and State

ATTACHED TO AND MADE A PART OF THE AGREEMENT FOR THE SETTLEMENT
OF A DISPUTE RELATING TO LAND WITHIN THE HUMBOLDT BAY AREA
(COMMERCIAL - K STREETS AREA; CITY OF EUREKA).

IN APPROVAL WHEREOF, I, EDMUND G. BROWN, JR., 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 11th day of September in the year of our Lord one
thousand nine hundred and eighty.


EDMUND G. BROWN, JR.
Governor

ATTEST

March Foxey Eue
SECRETARY OF STATE

BY: Margaret R. Kuehler

Approved this 3rd day of September, 1980.

GEORGE DEUKMEJIAN, Attorney
General of the State
of California

BY: George Deukmejian
Attorney General

