

COVENANT

RECORDING REQUESTED BY:

City of Alameda Base Reuse Department
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: Chief Operating Officer—Alameda Point

WHEN RECORDED, MAIL TO:

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612
Attention: Chief, Groundwater Protection Division

This document is exempt from payment of a recording fee pursuant to California Government Code §27383

SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE

COVENANT AND

ENVIRONMENTAL RESTRICTION ON PROPERTY

(Re: Parcel No. ALA-22-EDC (partial), Former Naval Air Station Alameda)

This Covenant and Environmental Restriction on Property (“Covenant”) is made by and between the City of Alameda, California (“City” or “Covenantor”), the current owner of certain portions of the former Naval Air Station Alameda (“NAS Alameda”), situated in the City of Alameda, County of Alameda, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the “Property”), and the California Regional Water Quality Control Board, San Francisco Bay Region (“Board” or “Covenantee”). A figure depicting the location of the Property is set forth in Exhibit B and is incorporated herein by this reference. The

Board has determined that this Covenant is reasonably necessary to protect present or future human health and safety or the environment as a result of the presence on the land and in groundwater of residual petroleum, a hazardous material defined in California Health & Safety Code (“H&SC”) section 25260, and enters into this Covenant in accordance with California Civil Code section 1471. The Covenantor and the Board, collectively referred to as the "Parties”, therefore intend that, in order to benefit the Board, and to protect the present and future public health and safety, the use of the Property be restricted as set forth in this Covenant to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Property, until the Board makes a written determination that all the restrictions as outlined in this Covenant are no longer necessary to protect human health and safety and the environment.

The Covenantor currently has legal title and interest in the Property sufficient to enter into and record this Covenant to provide for continuing enforcement of the restrictions contained in this Covenant. This Covenant shall run with the land to all successors and assigns. Further in any subsequent transfers or conveyances of the Property or any portion thereof, the City or any subsequent owner transferring or conveying the Property while this Covenant is in effect shall ensure that the subsequent transferee is provided with a copy of this Covenant.

It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE I.

STATEMENT OF FACTS

1.01 Property Description. The Property, totaling approximately 0.2 acres (870 square yards) is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in an open space area approximately 4,300 feet west-northwest of the intersection of Main Street and Navy Way, City of Alameda, State of California. Based on current environmental conditions, portions of the Property being transferred cannot support residential use due to the potentially unacceptable human health risk from residual petroleum contamination in soil.

1.02 Contamination of the Property. Soil at the Property was contaminated by diesel storage (in 60-gallon aboveground storage tank 330A) owned and operated by the US Navy. These operations resulted in contamination of soil with organic chemicals including petroleum hydrocarbons, which constitute hazardous materials as that term is defined in H&SC section 25260. The tank was removed on an unknown date before 1994. Whether petroleum products were in the tank at the time of disposal is unknown. The tank's disposal location is unknown. Whether soil was removed and disposed when the tank was removed is unknown.

1.03 Exposure Pathways. The contaminants addressed in this Covenant are present in soil under the Property. Without the mitigation measures which have been performed on the Property, exposure to these contaminants could take place via in-place contact, surface-water contact resulting in dermal contact, ingestion, or inhalation by humans. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

1.04 Adjacent Land Uses and Population Potentially Affected. The Property currently is used for open space and is adjacent to open space land use.

1.05 Full and voluntary disclosure to the Board of the presence of hazardous materials on the Property has been made and extensive sampling of the Property has been conducted.

1.06 City Program. The City will enroll the Property in its Land-Use Restriction Tracking Program (“City Program”), which requires use of the City’s Site Management Plan (“SMP”) that is acceptable to Board staff. The land-use restrictions for the Property will be identified in the City’s ACCELA Automation System (“ACCELA”). This system is the permit tracking system used by the City for all permit activity in the City. In addition, a digital copy of this covenant shall be uploaded to ACCELA and downloadable for printing or saving digitally.

Upon application by the Owner(s) or Occupant(s) to the City for a permit to engage in an activity which is otherwise prohibited pursuant to Section 4.01, the City will notify the applicant(s) of the land-use restrictions associated with the residual contamination. To ensure that human health and safety and the environment are protected, until the Property is determined to be safe for the proposed use, the City will help ensure compliance with the restrictions listed in Article 4.01, below, and will require that any deviation from or exception to the restrictions in Article 4.01 be allowed only upon issuance by the City, with concurrence by the Board, of a permit. As described in Article 4.02, below, such permit will include conditions which must be met, including compliance with a SMP, which shall be a condition of any permit that is granted. The SMP will be available through the City’s permitting process.

1.07 For the reasons set forth in Article 1.01 above, the Board has determined that certain restrictions are reasonably necessary to protect present and future human health and safety and the environment. The Board and Covenantor anticipate that, when the Board

determines that no further action is necessary to prevent harm to human health and safety or the environment or that the restrictions in this Covenant are no longer necessary to protect human health or the environment at portions of the Property, those portions of the Property will be released from this Covenant pursuant to the provision of Article VI.

ARTICLE II.

DEFINITIONS

2.01 Board. "Board" means the California Regional Water Quality Control Board, San Francisco Bay Region, and includes its successor agencies, if any.

2.02 Covenantor. "Covenantor" means the City of Alameda, California.

2.03 Improvements. "Improvements" shall mean all buildings, structures, roads, driveways, regradings, and paved parking areas, constructed or placed upon any of the Property.

2.04 Occupant. "Occupant" means any person or entity entitled by ownership, leasehold or other legal relationship to the right to occupy any portion of the Property.

2.05 Owner(s). "Owner(s)" means the Covenantor and/or its successors in interest who hold title to all or any portion of the Property, during their ownership of all or any portion of the Property.

ARTICLE III.

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "Restrictions"), subject to which the Property and every portion of the Property shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered and/or conveyed. The restrictions set forth in Article IV are reasonably necessary to protect present and future human health and safety or the environment as

a result of the presence on the land of hazardous materials. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions are enforceable by the Board.

3.02 Binding upon Owners and Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all Owners and Occupants of the Property, and their heirs, successors and assignees, and their agents, employees, and lessees. Pursuant to California Civil Code section 1471(b), all successive Owners of the Property are expressly bound hereby for the benefit of the Board.

3.03 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of the Property or any portion thereof, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Property and that the interests of the Owners and Occupants of the Property shall be subject to the Restrictions contained herein.

3.04 Written Notification. Because a hazardous substance is present upon or beneath nonresidential real property, a notification must be made pursuant to H&SC Section 25359.7. Specifically, prior to the sale or lease of a portion of the Property to be used for nonresidential purposes where hazardous substances are present, the Owner or lessor shall give the buyer or

lessee notice that a hazardous substance is located on or beneath that portion of the Property.
Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soil under the property, and is subject to a deed restriction dated as of _____, 2013, and recorded on _____, 2013, in the Official Records of Alameda County, California, as Document No. _____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

3.05 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant has been attached to or incorporated into any given deed or lease.

3.06 Conveyance of Property. The Owner shall provide notice to the Board not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Board shall not, by reason of this Covenant alone, have authority to approve, disapprove, or otherwise affect a conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV.

RESTRICTIONS

4.01 Restrictions. The following Restrictions on the Property shall apply until the Board makes a written determination required by Section 6.03, below, that the necessary

corrective actions have been completed or that the Restrictions are no longer necessary to protect human health or the environment.

(a) Use Restrictions. Development of the Property shall be restricted to industrial, commercial, and recreational. The Property shall not be used for any of the following purposes:

- (i) A residence, including any mobile home or factory-built housing constructed or installed for use as residential human habitation;
- (ii) A hospital for humans;
- (iii) A school for persons under 21 years of age;
- (iv) A daycare facility for children or Senior Citizens; or
- (v) Any permanently occupied human habitation.

Such uses of the Property, or portions of it as it may be subdivided, are prohibited unless (A) it has been demonstrated to the Board through further evaluation, which may include investigation or further remediation as guided by the City Program, that such use restrictions are no longer needed because there is no longer any unacceptable risk; or (B) engineering controls or other appropriate measures approved by the Board are implemented to mitigate health risks to future residents from residual petroleum in soil. Mitigation that includes engineering controls requires Board oversight and concurrence during both the design and construction project phases.

(b) Activity Restrictions. An Owner or Occupant of the Property, or any portion thereof, may not conduct any intrusive work involving grading, soil excavation, trenching, backfilling, or groundwater contact unless such work is conducted pursuant to an SMP approved by the Board and hereby incorporated by reference, including any future amendments thereto. The SMP shall include procedures consistent with all applicable local, state and federal laws for

proper notification, handling, and disposal of any potentially contaminated soil or groundwater encountered during construction or removed from the Property. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.

The Owner shall notify the Board of each of the following: (1) The type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and of any groundwater monitoring system installed on the Property pursuant to the requirements of the Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs.

(c) Land Use Change. The Board must be notified of any proposed changes in future land use at the Property. Formal Board concurrence for the proposed land use change may be required.

4.02 Procedures for Obtaining Board Approval. If the Owner or Occupant wishes to engage in an activity which is otherwise prohibited pursuant to Section 4.01, the Owner or Occupant shall make a written application to the City of Alameda pursuant to the City Program before engaging in the activity and shall provide the City with information sufficient to demonstrate that engaging in the proposed activity would be protective of human health and safety and the environment. Pursuant to the City Program, if the City approves this demonstration, it will submit the demonstration to the Board for its concurrence. If the Board

concurs with this demonstration, it shall authorize the City to approve the application. The City and/or the Board may require appropriate conditions of approval, including but not limited to, engineering controls or other appropriate measures approved by the Board as a condition of granting its approval, with which Owner or Occupant shall comply.

4.03 Non-interference with Ongoing Monitoring, Assessment or Final Remedy; Non-Disturbance. No Owner's or Occupant's construction activities and/or operations on the Property shall interfere with ongoing corrective actions including monitoring or assessment work or the final remedy being conducted by responsible parties. No Owner or Occupant of the Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Property.

4.04 Access for Board. The Board shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant, as may be amended, as deemed necessary by the Board to protect human health and safety or the environment.

4.05 Preservation of Remedial Measures and Equipment. All uses and development of the Property shall preserve any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Property pursuant to requirements of the Board, unless otherwise expressly permitted by the Board.

ARTICLE V.

ENFORCEMENT

5.01 Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of the

Restrictions. Violations of this Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

ARTICLE VI.

VARIANCE AND TERMINATION

6.01 Variance. The Owner, or with the Owner's consent, any Occupant, may apply to the Board for a written variance from the provisions of this Covenant. The Board will grant the variance only after finding that such a variance would be protective of human health and safety and the environment.

6.02 Termination. The Owner, or with the Owner's consent, any Occupant, may apply to the Board for a termination of the restrictions or other terms of this Covenant as they apply to all or any portion of the Property.

6.03 Release of Restrictions. Upon the Board making a written determination that (i) all removal or corrective actions required for any portion of the Property have been completed, or (ii) that any or all of the restrictions on the Property are otherwise no longer necessary to protect present or future human health and safety or the environment, the Board shall promptly authorize a release for terminating this Covenant or the relevant restriction with respect to the relevant portion of the Property.

6.04 Amendments. Any amendment to this Covenant must be approved and signed by both the Board and the City.

6.05 Term. Unless terminated in accordance with Article 6.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE VII.

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion of the Property to the general public or anyone else for any purpose whatsoever.

7.02 Recordation. The Covenantor shall record this Covenant, with Exhibits A and B, in the County of Alameda, within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or, (ii) three (3) business days after deposit in the mail if mailed by United States mail, postage paid and certified, return receipt requested:

To: "Covenantor":

City of Alameda
Base Reuse Department
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: Chief Operating Officer—Alameda Point

To: "Board":

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612
Attention: Chief, Groundwater Protection Division

Any party may change its address or the individual to whose attention a notice is to be sent by giving notice in compliance with this paragraph.

7.04 Partial Invalidity. If any portion of the Restrictions or terms set forth in this Covenant is determined by a court of competent jurisdiction to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion found invalid had not been included in this Covenant.

7.05 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.06 Article and Section Headings. The article and section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.07 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into this Covenant and to execute and legally bind that party to this Covenant.

7.08 Statutory References. All statutory references include successor provisions.

7.09 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the Parties execute this Covenant.

COVENANTOR:

CITY OF ALAMEDA

By: _____

City Manager

Date: _____

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

Executive Officer

1515 Clay Street, Suite 1400

Oakland, California 94612

By: _____

Date: _____

466107.1

State of California
County of Alameda

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTIONS AND PLATS OF PROPERTY

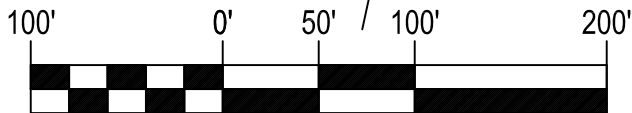
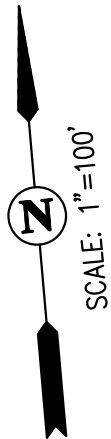
LEGEND:

POC = POINT OF COMMENCEMENT
 POB = POINT OF BEGINNING

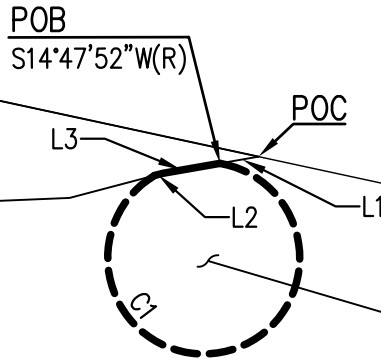
| CURVE TABLE | | | |
|-------------|--------|------------|---------|
| NO | RADIUS | DELTA | LENGTH |
| C1 | 50.00' | 319°21'01" | 278.69' |

ALA-06-EDC

| LINE TABLE | | |
|------------|-------------|--------|
| NO | BEARING | LENGTH |
| L1 | S85°06'57"W | 20.35' |
| L2 | N80°16'53"E | 4.63' |
| L3 | N85°06'57"E | 30.12' |



GRAPHIC SCALE



LAND USE
 RESTRICTION AREA,
 0.18 AC±

PARCEL 1 (PORTION)
 RECORD OF SURVEY
 NO. 1816
 28 RS 14

ALA-18-EDC

ALA-17-EDC



NOTE:

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3. DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY NO. 1816 (28 RS 14).

SHEET 1 OF 1

PLAT TO ACCOMPANY LEGAL DESCRIPTION

LAND USE RESTRICTION AREA
 FORMER NAS ALAMEDA
 ALAMEDA, CALIFORNIA
 JANUARY 14, 2016

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
 2633 CAMINO RAMON, SUITE 350
 SAN RAMON, CALIFORNIA, (925) 866-0322

JANUARY 14, 2016
JOB NO.: 1087-010

**LEGAL DESCRIPTION
LAND USE RESTRICTION AREA
FORMER NAS ALAMEDA
ALAMEDA, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY, AT PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHERN LINE OF SAID PARCEL 1, SAID POINT ALSO BEING THE EASTERN CORNER OF PARCEL ALA-06-EDC, AS SAID PARCEL ALA-06-EDC IS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED RECORDED JUNE 6, 2013, AS DOCUMENT NO. 2013-199794 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE SOUTHEASTERN LINE OF SAID PARCEL ALA-06-EDC, SOUTH 85°06'57" WEST 20.35 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, LEAVING SAID SOUTHEASTERN LINE OF PARCEL ALA-06-EDC (2013-199794); ALONG THE ARC OF A NON-TANGENT 50.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 14°47'52" WEST, THROUGH A CENTRAL ANGLE OF 319°21'01", AN ARC DISTANCE OF 278.69 FEET TO A POINT ON SAID SOUTHEASTERN LINE OF PARCEL ALA-06-EDC (2013-199794);

THENCE, ALONG SAID SOUTHEASTERN LINE OF PARCEL ALA-06-EDC (2013-199794), THE FOLLOWING TWO (2) COURSES:

- 1) NORTH 80°16'53" EAST 4.63 FEET, AND

2) NORTH 85°06'57" EAST 30.12 FEET TO SAID POINT OF BEGINNING.
CONTAINING 0.18 ACRES OF LAND, MORE OR LESS.

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3.
DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE
GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN
ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK
28 OF RECORDS OF SURVEY AT PAGE 14, ALAMEDA COUNTY RECORDS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS
REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

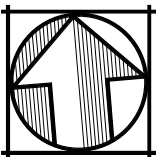
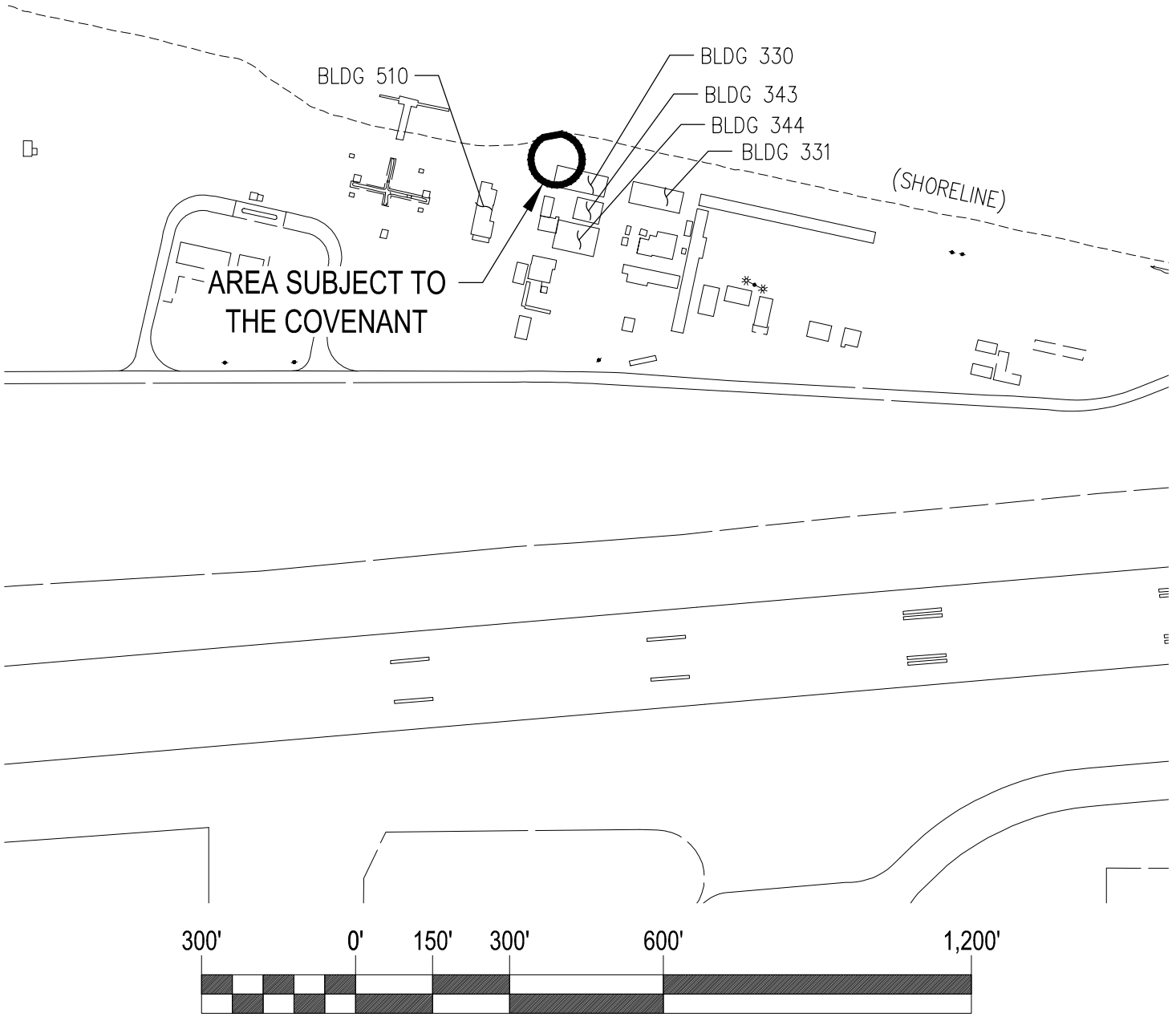
PRELIMINARY

SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

EXHIBIT "B"

FIGURE DEPICTING LOCATION OF PROPERTY

OAKLAND INNER HARBOR



ALAMEDA POINT
ALA-22-EDC

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA
DATE: JANUARY 13, 2016 SCALE: 1" = 300'



Carlson, Barbee
& Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS

2633 CAMINO RAMON, SUITE 350
SAN RAMON, CALIFORNIA 94583

(925) 866-0322
FAX (925) 866-8575

