

## SECOND AMENDMENT TO PIER ONE MASTER LEASE

This Second Amendment (“**Second Amendment**”) to Lease No. L-12838 between the City and County of San Francisco through the San Francisco Port Commission and AMB Property, L.P. for Real Property and Improvements located at Pier 1 (“**Master Lease**”) dated for reference purposes only as of February 8, 2016 is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), operating through the SAN FRANCISCO PORT COMMISSION (“**Port**”), as landlord, and AMB Pier One LLC, a California limited liability company, successor in interest to AMB Property, L.P., a Delaware limited liability company (now known as Prologis, L.P.), as tenant (“**Tenant**”).

### RECITALS

**A.** Effective August 2, 1999, Port and AMB Property, L.P., a Delaware limited partnership, entered into the Master Lease for development and use of that certain real property comprised of pier, shed, bulkhead, water and land surface area, all existing building, structures and substructures affixed thereto, together with all rights, privileges and licenses appurtenant thereto, known as Pier 1 (“**Master Premises**”). The Master Lease is for a fifty year term expiring on August 1, 2049 (“**Expiration Date**”). Concurrently, AMB Property, L.P. and Port entered into a sublease for a portion of the Pier 1 shed to Port (“**Port Sublease**”). Both the Master Lease and the Port Sublease were approved by the Port Commission by Resolution 99-17 and the Board of Supervisors by Resolution 329-99. In November 2000, Port and AMB Property, L.P., entered into a First Amendment to the Master Lease to make revisions regarding historic tax credits, participation in sale proceeds and Port Sublease rent (“**First Amendment**”). The Port Sublease commenced on February 1, 2001 and expires on the Expiration Date.

**B.** With Port’s consent, AMB Property, L.P. assigned its entire interest in the Master Lease to AMB Pier One LLC, a California limited liability company (“**AMB Pier One**” or “**Tenant**”) pursuant to that certain Assignment and Assumption Agreement dated November 17, 2000. AMB Pier One then entered into a sublease with AMB Property L.P. commencing on December 11, 2000 and expiring on December 10, 2020 (subject to extension options) for AMB Property, L.P.’s sublease of certain portions of the Master Premises (as amended, the “**Prologis Sublease**”).

**C.** On June 3, 2011, the general partner of AMB Property, L.P., AMB Property Corporation, a Maryland corporation, merged with Prologis, a Maryland real estate investment trust, with the surviving entity AMB Property Corporation changing its name to Prologis, Inc., and its operating company AMB Property, L.P. changing its name to Prologis, L.P., a Delaware limited partnership. As a result, AMB Pier One continues to be a wholly-owned subsidiary of Prologis L.P. Prologis, L.P., formerly known as AMB Property, L.P., is hereinafter referred to herein as “**Prologis**.”

**D.** The Master Premises of the Master Lease has been slightly modified by the: Memorandum of Technical Corrections (February 2, 2004), Second Memorandum of Technical Corrections (April 24, 2007) and Third Memorandum of Technical Corrections (March 10, 2015) (collectively, the “**Technical Corrections Memos**”), each of which revised the legal description of the Master Premises and each of which has been recorded.

**E.** Tenant now desires to obtain a fifteen (15) year extension option as more particularly described in Section 4 below. As material consideration for the option, Tenant agrees to the following significant terms as further described in this Second Amendment, and the First Amendment to the Port Sublease and the Third Amendment to the Prologis Sublease (each to be executed concurrently with this Second Amendment): (i) in the next five years, Prologis will make substantial capital investments in Pier 1 and will consolidate its space allowing for additional subleasing at current market rates which is expected to result in increased participation rent to Port; (ii) Port will have an early termination right and a 15-year extension option under the Port Sublease; (iii) Tenant will commit to address sea level rise and the requirements of the Port's Chief Harbor Engineer as more specifically set forth in this Second Amendment; (iv) the three amendments will include various provisions to incorporate the above terms into the existing leases, including provisions for valuation and rent adjustments; and (v) updated City requirements will be added to the Master Lease and subleases. The Parties agree that each of the terms in this Second Amendment are material and that Port would not have agreed to the extension option absent such terms.

**F.** The extension option and other terms included in this Second Amendment will enable the parties to continue to support the Public Trust and the original project objectives by preserving the historic integrity and aesthetic character of the Ferry Building Harbor Area by additional investments in and upgrades to the Pier One historic renovation.

**G.** Tenant is in Good Standing under the Port's policy set forth in Port Commission Resolution No. 09-49.

**H.** The Master Lease, Technical Corrections Memos, First Amendment and this Second Amendment shall collectively be referred to as the "**Master Lease**". All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Master Lease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby amend the Master Lease as follows:

**AGREEMENT**

- 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
- 2. Premises.** *Exhibit A (Revised Legal Description)* and *(Exhibit B Revised Site Plan)* attached to this Second Amendment replace the original Master Lease exhibits to reflect the Technical Corrections Memos and are attached hereto for the parties' convenience.
- 3. Condition to Port's Execution of this Second Amendment.** No later than the Second Amendment Effective Date, as defined in Section 24 of this Second Amendment, and subject to Port's consent, AMB Pier One and Prologis will amend the Prologis Sublease to include the terms described below. Port shall have no obligation to execute this Second Amendment absent such amendment of the Prologis Sublease.

(a) Term and Rent.

- (i) The first and second option terms will be eliminated and the term of the Prologis Sublease will be extended to December 10, 2040. Prologis shall then have the

one final extension option remaining pursuant to Article 4(B) of the Prologis Sublease, which, if exercised, would extend the Prologis Sublease term from December 11, 2040 through the Expiration Date of the Master Lease (August 1, 2049). Rent for the period between the original expiration date of the Prologis Sublease (December 10, 2020) and the new expiration date (December 10, 2040) shall be determined in the manner set forth in Section 2(D) of the Prologis Sublease.

(ii) AMB Pier One may also grant Prologis an additional extension option for up to fifteen (15) years which shall not exceed the term of the AMB Pier One 15-year extension option provided by this Second Amendment. If AMB Pier One offers an extension option, it must be personal to Prologis, or its "Affiliates" as that term is defined in the Master Lease, and not otherwise assignable. Prologis's rent during the extension term, if any, would be determined in the manner set forth in Section 2(D) of the Prologis Sublease.

(iii) Subtenant's rights to terminate as provided in Section 4(C) of the Prologis Sublease will be eliminated.

(b) Improvements. No later than five (5) years from the Second Amendment Effective Date (as defined in Section 24 of this Second Amendment), Prologis agrees to invest a minimum of \$10 million for the renovation of Bay 1A of which at least \$2 million will be dedicated to core and shell upgrades to Pier 1 ("**Subtenant Improvements**"). At a minimum, the Subtenant Improvements must include: improvements to the central plant, which will serve the entire building; increased restroom capacity and core plumbing; and replacement of major components of the existing HVAC system to achieve a more functional, efficient, cost effective and environmentally sustainable system. The Subtenant Improvements shall be constructed at no cost to Port and, except as explicitly provided in this Second Amendment, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any improvements discussed above and agrees that it will not seek additional term for the purpose of amortizing the improvements. All Improvements that require Port approval under Section 10 of the Master Lease are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the "**Secretary's Standards**"), and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures.

The Parties acknowledge and agree that in order to construct the improvements described above, Prologis will temporarily consolidate its premises into Bay 1B (approximately 11,096 square feet). Once construction is complete, Prologis will return to the renovated Bay 1A (approximately 40,000 square feet) and AMB Pier One will actively market Bay 1B for third party sublease, and upon execution of such sublease, Bay 1B will be removed from the premises under the Prologis Sublease. Bay 1A and Bay 1B are shown in the attached *Exhibit C*. Section 4 below describes AMB Pier One's obligations with respect to rent during the construction period.

(c) City Requirements. The Prologis Sublease will be revised to include applicable new and revised City requirements described herein.

(d) Notice Requirement. Tenant must notify Port in writing of any further amendment to the Prologis Sublease no less than sixty (60) days prior to the proposed effective date of such amendment; provided, however, that Port shall not have consent

rights over any such amendments unless Port consent is required pursuant to the terms of the Master Lease or as expressly set forth in this subsection. Notwithstanding anything to the contrary in the Master Lease or in Port's consent to the amendment contemplated by this Second Amendment, any further amendment to the Prologis Sublease shall be subject to Port's consent in its sole discretion (and, if required to Port Commission and/or Board of Supervisors' approval, each in its sole discretion) if such amendment could materially impact the benefits to Port provided by subsections (a)(i), (a)(iii) or (b) above.

(e) Revocation of Extension Option. After notice and no less than One Hundred Eighty (180) days to cure, Port may, in its sole discretion, revoke the Extension Option should the above conditions not be fulfilled.

(f) Confirmation. Solely for purposes of determining whether the conditions precedent for the offering of the Extension Option described above have been satisfied, within One Hundred Eighty (180) days of Tenant's written request, Port shall provide Tenant with a written response either confirming that Tenant and Prologis have fulfilled the obligations described above to Port's satisfaction in its reasonable discretion or the reasons that Port cannot provide such confirmation.

4. Master Lease Extension Option. Section 45 is added to the Master Lease to read as follows:

**"45. EXTENSION OPTION.**

45.1 Re-Tenancing Bay 1B. Once the Subtenant Improvements described in Section 3 of the Second Amendment are complete, Tenant will use commercially reasonable efforts to actively market Bay 1B to a third party at fair market value rent and terms, subject to (i) Port's consent as to all terms, including the rental rate, and as otherwise provided by Section 16.3 of this Lease; (ii) Port's agreement to a Standard Tenant Improvement Allowance, if any, under Section 2.5(b)(i) of this Lease; and (iii) Port's review and comment on a Marketing Plan submitted to Port no less than ninety (90) days prior to entering into a new sublease. Notwithstanding Tenant's commercially reasonable efforts to re-lease the Bay 1B space, for any period during which Bay 1B is not subleased to a third party or is not generating rental income, Tenant shall continue to pay Rent to Port for the Bay 1B space until the rent commencement date for the new subtenant(s) such that there is no negative financial impact to Port. In no event shall the rent for the new subtenant be less than the effective per square foot rate in effect immediately prior to the date of surrender of Bay 1B by Prologis.

45.2 Option to Extend Term. Provided that all the terms and conditions of this Section 45 are satisfied by Tenant and the Subtenant Improvements described in Section 3(b) of the Second Amendment have been completed, Port grants to Tenant an option for one (1) additional fifteen (15) year term ("**Extension Term**") as to the entire Premises only ("**Extension Option**") commencing upon the date following the Expiration Date (the "**Option Commencement Date**") (August 2, 2049) and expiring on August 1, 2064 ("**Option Expiration Date**"). Tenant may exercise the Extension Option no earlier than forty-eight (48) months prior to the Expiration Date and no later than twenty-four (24) months prior to the Expiration Date by providing Port with written notice of its intent to exercise the Extension Option ("**Option Notice**"). Tenant's exercise of the Extension Option shall be non-revocable by Tenant. There shall be no additional options to extend the Term. The Parties acknowledge and agree that Tenant's rights and obligations under this Section 45 are a material part of the bargained-for consideration under this Lease.

If (i) any Event of Default by Tenant is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term and remains uncured after notice and the expiration of all applicable cure periods; or (ii) the obligations required by Section 3 of the Second Amendment have not been fulfilled to Port's satisfaction in its reasonable discretion, then Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. If Tenant fails to exercise the Extension Option or Port rejects Tenant's exercise of the Extension Option in accordance with this Section 45.2, then this Lease will terminate as of the original Expiration Date.

The lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the Option Expiration Date and the Rent hereunder shall be determined as set forth in this Section.

#### 45.3 Rent During Extension Term.

(a) Minimum Rent. The Minimum Rent for the Extension Term ("**Extension Term Minimum Rent**") shall be adjusted to equal the then Fair Market Value based upon the market rental rate for comparable land in comparable locations along the San Francisco waterfront and in downtown San Francisco. Notwithstanding anything to the contrary herein, Extension Term Minimum Rent shall not include rental for the value of any offices, buildings or improvements. In the event any comparable ground leases include rent that factors in the value of improvements, then the rental value given to any such improvements shall be deducted from the overall rent amount used in such comparable ground leases. Such deduction calculation for the rental value associated with such improvements and the determination of the Extension Term Minimum Rent shall be based on commercially reasonable and customary standards for real estate appraisal and be in conformance with Uniform Standards of Professional Appraisal Practice. The methodologies shall be consistent with typical methods used by California licensed commercial real estate appraisers who hold the MAI designation from the Appraisal Institute. Determination of the Extension Term Minimum Rent shall also include a determination of the type, amount and frequency of built-in escalators (e.g. Consumer Price Index increases or periodic percentage adjustments) for the applicable period based on comparable leases for comparable land in comparable locations along the San Francisco waterfront and in downtown San Francisco ("**Interim Escalation**"). The Extension Term Minimum Rent shall be determined as follows:

(i) Port shall determine the Extension Term Minimum Rent by using its good faith judgment based upon comparable land values and land rental rates in comparable locations along the San Francisco waterfront and in downtown San Francisco and shall submit to Tenant its written determination of the Extension Term Minimum Rent no less than Two Hundred Seventy (270) days prior to the Option Commencement Date. For purposes of determining Fair Market Value, the Port agrees to reasonably cooperate with Tenant to provide market information concerning other existing Port leases and transactions. In the event Port and Tenant are unable to mutually agree on the Extension Term Minimum Rent within thirty (30) days after delivery of Port's notice to Tenant of its determination, then the Extension Term Minimum Rent shall be set by the appraisal process described below. In no event will the Extension Term Minimum Rent so determined be less than the Minimum Rent in effect as of the original Expiration Date (\$1,341,543 annually).

(ii) Within forty-five (45) days after the expiration of the thirty (30) day period specified above, each Party, at its cost and by giving notice to the other Party,

shall appoint a real estate appraiser holding an MAI designation with at least ten (10) years full-time commercial appraisal experience appraising comparable space in the City of San Francisco to prepare an appraisal of the Extension Term Minimum Rent. If a Party does not appoint an appraiser within such 45-day period, the single appraiser appointed shall be the sole appraiser and shall prepare an appraisal of the Extension Term Minimum Rent. Each appraiser shall conduct an independent appraisal within forty-five (45) days after appointment. Each appraiser can utilize the services of special experts, including experts to determine such things as property condition, market rates, leasing commissions, renovation costs and similar matters. The Parties shall cause each appraiser to produce his or her determination in writing, supported by the reasons for the determination.

If the higher appraised rent is one hundred ten percent (110%) or less of the lower appraised rent, then the final Extension Term Minimum Rent shall be the average of such two (2) rent figures (rounded to the nearest \$1.00). If the higher appraised rent is more than one hundred ten percent (110%) of the lower appraised rent, then the Parties shall cause the first two appraisers to agree upon and appoint an independent third appraiser from the City's list of approved appraisers (San Francisco Department of Real Estate) within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties and shall inform the Parties of their appointment at or before the end of such thirty (30) day appointment period. The third appraiser shall submit a declaration to the Parties disclosing any work performed by such appraiser for either Party, any entity related to either Party, or their attorneys, principals, or officers, and any relationship between the third appraiser and either Party that could reasonably be construed as a conflict of interest.

Either Party may, by written notice to the other Party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the Parties shall cause the two (2) appraisers to promptly select another third appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Lease. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30) day period (or within a reasonable period thereafter not to exceed thirty (30) days in the event a good faith objection is made as provided above), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within thirty (30) days from the date on which the Party first applies to the Court for appointment of the third appraiser, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

Each Party shall bear the fees, costs and expenses of the appraiser it selects and of any experts and consultants used by that appraiser. Each Party shall bear one-half (1/2) of the cost of any fee associated with selecting and charged by the third appraiser (if any).

Within thirty (30) days after his or her appointment, the third appraiser shall conduct a hearing, at which Port and Tenant may each make supplemental oral and/or written presentations, with an opportunity for testimony by the first two appraisers and questioning by the Parties and the third appraiser. Within thirty (30) days following the hearing, the third appraiser shall select the appraised Extension Term Minimum Rent determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the arbitrator, to the actual Extension Term Minimum Rent. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the actual Extension Term Minimum Rent. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease. The Extension Term Minimum Rent so determined shall be conclusive, final and binding on the Parties, except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time). Except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time), the provisions of Title 9 of the California Code of Civil Procedure shall not have any application to the appraisal procedure set forth herein.

Upon determination of Extension Term Minimum Rent, the Parties shall acknowledge by an addendum hereto the Extension Term Minimum Rent (to be retroactive to the Option Commencement Date if determined after such date), provided that failure to do so shall not affect the effectiveness of the Extension Term Minimum Rent.

(b) Deductions from Participation Rent during the Extension Term. Starting on the Option Commencement Date, the following will be added to Section 2.5(b)(i) after “(E)” to allow the exclusion of: (i) the costs of certain core and shell improvements and (ii) certain market-driven tenant improvement costs from Total Rental Income:

**(F)** notwithstanding Section 2.7, one hundred percent (100%) of the cost of any capital improvement to the core and shell of Pier 1 including any premises leased to subtenants, but not including the pier structure or Substructure (“**Core and Shell Improvements**”) provided that (i) the Core and Shell Improvements and the amount of such deduction is approved in advance by Port in its reasonable discretion through approval of a detailed budget and scope of work (as revised and/or updated and approved by Port from time to time), including in connection with Port’s consent to a sublease; (ii) regardless of the Expiration Date, the cost of such improvements is amortized over the useful life of such Core and Shell Improvements as determined by standard depreciation schedules, as approved by Port in its reasonable discretion; and (iii) all Core and Shell Improvements are performed in compliance with Section 10 (Subsequent Construction) and other applicable provisions of the Lease; and **(G)** the actual costs incurred and paid for tenant improvements and/or improvement allowances in connection with subleases which improvements and/or allowances must be comparable to other similar improvements and/or allowances for comparable space at a comparable location along the San Francisco waterfront and in downtown San Francisco for renewing or new subtenants as the case may be amortized over the useful life of such improvements on a straight-line basis as determined by standard depreciation schedules, subject to the arbitration procedures set forth in Section 45.3(a)(i) - (ii) if the parties fail to agree (“**Amortized TI and Allowances**”).

(i) During the Extension Term, with each quarterly Participation Rent Statement, Tenant shall provide adequate documentation of the actual costs of the Core and Shell Work and/or Amortized TI and Allowances deducted, accompanied by

documentation reasonably satisfactory to Port evidencing such expenditures. All such proofs of expenditure must be attributable directly to work or materials performed, constructed or installed in connection with the Core and Shell Improvements and/or Amortized TI and Allowances.

(ii) Tenant may not deduct the cost of any items not expressly excluded from the definition of Total Rental Income in Section 2.5(v)(i) of the Lease as modified by the Second Amendment and shall not include items related to Tenant's trade fixtures, office equipment and supplies, furniture, communications facilities (whether voice or data) or any other items of personalty not intended to be affixed to or become a part of the Building or its utility systems, nor any fees, exactions, impositions, or similar charges imposed as a condition to permit approval. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the work, the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. In no event shall the cost of any construction management fees, general administrative costs or other forms of mark-up be eligible for deduction unless clearly identified in the Port's approval. Furthermore, except to the extent such costs are (A) included within the operating expenses and common area maintenance costs paid to Tenant by Subtenants as provided in Section 2.5(b)(i)(C) and (B) specifically allowable under Section 2.5(b)(i)(F) (added by the Second Amendment), in no event shall maintenance, repair and/or replacement costs be eligible for deduction.

(iii) Tenant shall not be entitled to any unapplied or unused portion of the approved costs that are not deducted during the Extension Term. Other than as set forth in this Section and Section 46.2 regarding Pier Flood Protection Measures that are Core and Shell Improvements, Port shall have no obligation to provide, and Tenant shall not be entitled to, a rent credit, tenant improvement allowance or any other form of reimbursement or credit in connection with such Core and Shell Improvements.

(iv) Notwithstanding anything to the contrary contained herein, in no event shall Tenant be entitled to any deduction for Core and Shell Improvements costs or Amortized TI and Allowances in the event Tenant is in default, or an event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default. Upon the occurrence of a Tenant Event of Default during any period Tenant is eligible for the deductions described in this section, Tenant's right to deduct shall cease and shall not be reinstated until the Tenant Event of Default is cured. In no event shall the cessation in the application of the deduction extend the amortization schedule.

(c) Participation Rent.

(i) Additional Participation Rent. Notwithstanding any other provision of this Lease, Tenant shall pay to Port a minimum guaranteed Participation Rent for Bay 1B of Five Hundred Thousand dollars (\$500,000) (the "Minimum Guaranteed Amount") over four (4) years in equal quarterly installments of Thirty One Thousand Two Hundred Fifty dollars (\$31,250) each in the manner specified in this Section. The Participation Rent for Bay 1B shall be reported and calculated independently of the remainder of the Premises until Tenant has paid the Minimum Guaranteed Amount and such payment is not subject to any set off, adjustment or deduction for any of the items listed in 2.5(b)(i)(A)-(E) or otherwise. On a quarterly basis, commencing with the first quarterly Participation Rent Statement due after the Second Amendment Effective Date until the Minimum Guaranteed Amount is paid in full, Tenant shall pay the greater of: (i) Thirty One Thousand Two Hundred Fifty dollars (\$31,250); or (ii) the Participation Rent otherwise due for Bay 1B calculated per Section 2.5(b) which will be based on (A) starting on the



rent commencement date for the new Bay 1B subtenant, the rent paid by the new Bay 1B subtenant or (B) prior to such rent commencement date, the effective per square foot rate immediately prior to the date of surrender by Prologis as described in Section 45.1 above. Once the entire Minimum Guaranteed Amount is paid, Tenant shall pay Participation Rent for Bay 1B in combination with the rest of the Premises as otherwise provided by this Lease. If, for any reason, this Lease terminates prior to the payment of the entire Minimum Guaranteed Amount, Tenant shall pay the unpaid balance payment prior to such termination date.

(ii) If Tenant elects to exercise the Extension Option, then, starting on the Option Commencement Date, the definition of "Excess Rental Income" in subsection (b)(ii) shall be deleted and replaced with the following definition to eliminate the deduction for Projected Total Rental Income from Excess Rental Income:

"Excess Rental Income" means the Total Rental Income received by Tenant in excess of the Minimum Rent (if any) determined on a quarterly basis."

5. **Flood Risk And Sea Level Rise.** Section 46 is added to the Master Lease to read as follows:

**"46. FLOOD RISK AND SEA LEVEL RISE.**

46.1 **Flood Risk and Sea Level Rise Disclosure.** On November 12, 2015, the U.S. Federal Emergency Management Agency ("FEMA") published draft Flood Insurance Rate Maps (FIRMs) for the City and County of San Francisco that depict all pile supported Port piers and many other Port structures in a Special Flood Hazard Area subject to a 100-year flood. The City expects FEMA to finalize these maps by the end of 2016, at which point the maps will be appended to the San Francisco Floodplain Management Ordinance (Administrative Code Chapter 2A, Article XX).

On September 22, 2014, acting through its Capital Planning Committee, the City and County of San Francisco adopted "Guidance for Incorporating Sea Level Rise Into Capital Planning in San Francisco: Assessing Vulnerability and Risk to Support Adaptation" (the "SLR Guidance"), a copy of which can be accessed at <http://onesanfrancisco.org/staff-resources/sea-level-rise-guidance/>. The SLR Guidance quotes the findings of the 2012 National Research Council Report, *Sea-Level Rise for the Coasts of California, Oregon and Washington: Past Present and Future*, which projects sea level rise estimates for San Francisco Bay relative to the year 2000 of 11 inches (+/- 4 inches) by 2050 and 36 inches (+/- 10 inches) by 2100 as the most likely scenarios for sea level rise (the report quotes 66 inches of sea level rise by 2100 as a worst case scenario). Tenant represents and warrants to Port that Tenant has received and reviewed the FEMA disclosure notice attached as *Schedule 1*.

46.2 **Pier Flood Protection Measures.** In addition to Tenant's obligations to comply with Laws under Section 6 (Compliance with Laws) and to repair and maintain the Premises (including, but not limited to, the Bulkhead and Substructure, pier, pier apron, the Public Access Area and all other Improvements) under Section 8 (Repair and Maintenance), if, at any time during the Term of this Lease, and subject to compliance with the California Environmental Quality Act ("CEQA"), the Chief Harbor Engineer determines in his or her regulatory capacity in accordance with applicable Laws that there is a need for **Pier Flood Protection Measures** (as defined below) at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety ("**CHE Determination**"), Tenant shall be responsible at no cost to Port for

permitting, constructing and implementing any such Pier Flood Protection Measures in the manner described in this Section. Except as provided in Section 45.3(b) with respect to Core and Shell Improvements during the Extension Term, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any Pier Flood Protection Measures and agrees that it will not seek additional term for the purpose of amortizing the cost of any Pier Flood Protection Measures. Port and Tenant agree that neither a CHE Determination nor a Threat Determination (as defined below) under this Section 46 shall be a Condemnation for purposes of this Lease.

“**Pier Flood Protection Measures**” may include without limitation (1) temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with wave overtopping of the pier apron; (2) waterproofing or relocation of utility infrastructure from underneath the pier to minimize the risk of water or wastewater discharges to San Francisco Bay; and/or (3) short perimeter flood walls or similar measures to address more frequent and serious flooding associated with stillwater levels at or above the elevation of the pier deck. For purposes of this section, and without affecting Tenant’s other obligations under the Lease (including under Section 6 (Compliance with Laws) and Section 8 (Repair and Maintenance)), Pier Flood Protection Measures do not include raising first floor elevations or measures to rebuild the pier structure or Substructure that are beyond Tenant’s maintenance and repair obligations or regional improvements such as breakwater or levee improvements which the parties acknowledge may be necessary to protect the City from sea level rise, but are beyond the scope of this Lease.

(a) CHE Determination Notice. Promptly following a CHE Determination, Port will deliver to Tenant notice of the CHE Determination (“**CHE Determination Notice**”). The CHE Determination Notice will include a description of the need for required Pier Flood Protection Measures and a timeline to submit for the Chief Harbor Engineer’s approval, in his or her sole discretion, a conceptual level scheme of the required measures along with a schedule for completing design, securing all regulatory approvals and completing construction (“**Pier Flood Protection Plan**”). The Chief Harbor Engineer has the sole discretion to approve or disapprove the final designs and implementation of any Pier Flood Protection Measures to be constructed within Port’s jurisdiction (including the Premises). Within sixty (60) days of receiving such plan, the Chief Harbor Engineer will review and either approve the plan or request revisions to the plan. If revisions are required, Tenant will promptly revise the Pier Flood Protection Plan and re-submit to the Chief Harbor Engineer for his or her review and approval. Tenant will continue to revise and re-submit until the Chief Harbor Engineer approves the Pier Flood Protection Plan, as revised; provided, however, Tenant must have obtained the Chief Harbor Engineer’s approval of a Pier Flood Protection Plan (the “**Approved Pier Flood Protection Plan**”) within the time period set forth in the CHE Determination Notice.

(b) If Tenant fails to implement any required Pier Flood Protection Measures or the Approved Pier Flood Protection Plan within the time required in the CHE Determination, subject to extension of such date due to Force Majeure with the CHE’s consent as to an outside completion date, Port shall provide Tenant with thirty (30) days written notice and the right to cure such failure. If Tenant fails to cure within the 30-day period, Port shall have the right but not the obligation to implement the measure(s) on Tenant’s behalf following an additional thirty (30) days’ written notice of Port’s intent to do so and Tenant shall reimburse Port for its actual costs. In the event that Tenant’s breach of the obligations in this Section 46 gives rise to an emergency which creates an imminent danger to public health or safety as determined by the CHE, Port will provide advance notice, if possible, as is reasonable under the circumstances. This provision is not subject to the notice and cure periods provided by Sections 21.1 or 21.2 (Port’s Right

to Perform) or 22 (Events of Default; Termination), but Port shall have all other rights and remedies provided in this Lease or available at law or equity for Tenant's default under this Section 46, including without limitation, those provided in Sections 23 and 24 (Remedies and Port's Equitable Relief) which shall survive the expiration or earlier termination of this Lease.

46.4. Termination. If, at any time during the Term, including the Extension Term if any, the Chief Harbor Engineer determines conditions at the Premises pose an ongoing threat to public health and safety due to flood risk and sea level rise conditions (even despite construction of the Pier Flood Protection Measures) ("**Threat Determination**"), this Lease will terminate within ninety (90) days of the Chief Harbor Engineer's written notice to Tenant of the Threat Determination, or the termination date set forth in the Threat Determination notice, whichever is earlier, without cost or liability to Port.

46.5 Required Flood Protection Improvements for Other Port Property. If the Chief Harbor Engineer determines that there is a need to install flood protection measures within the Premises to protect other Port property, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of Port property outside the Premises. If Port elects to perform flood protection measures for other Port property, Port shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course of such work, provided Port uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

46.6 Limitations; Waiver.

(a) The Parties acknowledge and agree that Tenant's obligations under this Section 46 are a material part of the bargained-for consideration under the Second Amendment to this Lease. Tenant's obligation hereunder in connection with the Pier Flood Protection Measures shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements and the Bulkhead and Substructure), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, or the likelihood that the Parties contemplated the particular Pier Flood Protection Measures involved. Further, no occurrence or situation arising during the Term, nor any present or future Law or circumstance, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port except with respect to Tenant's right to terminate under the terms and conditions specified in Section 12 (Damage and Destruction) and Section 13 (Condemnation). Without waiving the right to terminate as provided in Section 12 (Damage and Destruction) and Section 13 (Condemnation), Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws or on account of any such occurrence or situation. Notwithstanding anything to the contrary, neither Port, City nor Tenant are waiving any rights against any non-affiliated third party with respect to

the waiver contained in this Section. "Third party" does not include City or any of its agencies.

(b) If the Chief Harbor Engineer determines that there is a need for Pier Flood Protection Measures or makes a Threat Determination as described in this Section, the rights and obligations of the Parties shall be as set forth in this Section. Accordingly, Port and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure as such sections may from time to time be amended, replaced, or restated. Notwithstanding the prior sentence, Port and Tenant do not intend to waive their rights under Section 12 (Damage and Destruction) and Section 13 (Condemnation) in the event of damage, destruction or Condemnation. Tenant understands and expressly accepts and assumes the risk that any facts concerning potential claims released might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Section shall remain effective. Therefore, as to the matters discussed in this Section, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

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

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time the Second Amendment was made, or that Tenant had the opportunity to consult with counsel, but declined to do so."

**6. Additional Improvements to Address Sea Level Rise.** Section 47 is added to the Master Lease to read as follows:

**"47. ADDITIONAL IMPROVEMENTS TO ADDRESS SEA LEVEL RISE.**

At any time during the Term or the Extension Term, Port or Tenant may propose optional additional improvements to be performed by Tenant, at its option and at its cost that (i) are beyond the scope of the potential Pier Flood Protection Measures contemplated in Section 46 of the Lease, such as raising first floor elevations or measures beyond repair and maintenance of pier structure or Substructure elements (such as rebuilding such structures) or to address the impacts of sea level rise in order to preserve or enhance the value or useful life of the Premises; and (ii) are not otherwise Tenant's obligation under this Lease (including under Section 6 (Compliance with Laws) and Section 8 (Repair and Maintenance)). If Port, in its proprietary capacity, approves such improvements and the improvements cannot be amortized over the remaining original Term as determined by standard depreciation schedules and subject to Port's concurrence in its reasonable discretion, then, notwithstanding the timeframe set forth in Section 45.2 of the Lease, but subject to all other terms and conditions of Section 45.2, Tenant may exercise its Extension Option at the time of Port's approval. The acceleration of Tenant's right to exercise its option will not affect Port's extension option as provided in Section 1(F)(a) of the Port's Sublease or the timing thereof. Tenant acknowledges that additional Regulatory Approvals will be required for such improvements, as well as possible additional environmental review and Port Commission's and Board of Supervisors' approvals, each in its sole discretion. Nothing in this Section 47 shall affect the parties' rights and obligations under Section 46 of the Lease."

7. **Condition and Nature of Premises.** Section 48 is added to the Master Lease to read as follows:

**“48. CONDITION AND NATURE OF PREMISES.**

48.1 Tenant acknowledges that: (a) the Premises is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (c) there is a risk that sea level rise will increase the cost of substructure repairs and/or prevent or limit the ability to make repairs to the substructure; and (d) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

48.2 Port is undertaking an Earthquake Vulnerability Study of the Northern Waterfront Seawall (the “Seawall”) that is expected to be published by mid-2016. The proximate location of the Seawall is shown on *Exhibit D* attached hereto. A description of the study along with a progress update can be found in the Port staff report for Item 12a of the October 13, 2015 Port Commission meeting at the following links:

<http://sfport.com/modules/showdocument.aspx?documentid=10533>

<http://sfport.com/modules/showdocument.aspx?documentid=10534>

48.3 Subject to the rights of Subtenants, including the Port under the Port Sublease, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port and permit Port and its Agents to enter the Premises upon reasonable prior notice (except in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of inspecting, repairing and rebuilding the Seawall as Port reasonably deems necessary. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of the Premises or Seawall. If Port elects to perform work on the Seawall within the Premises pursuant to this Section, Port shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.”

8. **Term.** Section 1.2 (Term) is deleted and replaced with the following:

“1.2 **Term.**

The Term of this Lease commenced on August 2, 1999 (the “**Commencement Date**”). The Term of this Lease shall expire on August 1, 2049, subject to the Extension Option described in Section 45 (Extension Option) of this Lease unless earlier terminated in accordance with the terms of this Lease. The period from the Commencement Date until such expiration date or the Option Expiration Date, as the case may be, is referred to as the “Term.”

**9. Development Project; Accessibility.** Sections 1.6 – 1.8 are added to the Master Lease to read as follows:

"1.6. Proximity of Development Project Tenant acknowledges that during the Term, a Seawall Lot 351 project, the Downtown Ferry Terminal Project and other development, removal or renovation projects by public and/or private parties are or may be scheduled to be constructed on property in the vicinity of the Premises. Tenant is aware that the construction of such projects and the activities associated with such construction will generate certain adverse impacts that may result in some inconvenience to or disturbance of Tenant. Such impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all claims against the Indemnified Parties arising out of such inconvenience or disturbance, including without limitation any abatement or reduction of Rent.

1.7. Accessibility Inspection Disclosure. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the portions of the Premises added by this Second Amendment have not been inspected by a CASp."

1.8. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable Disabled Access Laws. As further set forth in Section 6 (Compliance with Laws), Tenant further understands and agrees that it is Tenant's obligation, at no cost to Port, to cause the Premises and Tenant's use thereof to be conducted in compliance with Disabled Access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under Disabled Access Laws."

**10. Reporting Requirements for Possessory Interest Taxes.** Section 4.1(ii) is deleted and replaced with the following:

"(ii) Reporting Requirements. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance)."

**11. Prevailing Wages.** Section 10.7(e) (Prevailing Wages ) of the Lease is deleted (see new Section 42.16).

**12. Secretary's Standards.** Section 10.10 is added to read as follows:

“10.10 All interior and exterior Alterations (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of the building) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the "Secretary's Standards"), and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as *Exhibit E* ("Port's Guidelines"). Tenant expressly agrees to comply with the Secretary's Standards for all current and future interior and exterior repair, alteration, improvement or construction. Additionally, Tenant expressly agrees to comply with Port's Guidelines as applicable.”

**13. Pesticides.** Section 19.1(d) of the Lease is deleted (see new Section 42.19).

**14. Energy Consumption.** Tenant shall obtain energy efficiency audits and annually measure and disclose energy performance, in accordance with the standards of the San Francisco Environment Code Chapter 20: Existing Commercial Buildings Energy Performance. These requirements are necessary to comply with the Energy Performance, Data Checklist, and Facility Summary requirements set forth in the California Public Resources Code Section 25402.10 et seq. and 8 CCR § 1680 et seq.. Tenant acknowledges that Port currently has no data to disclose regarding energy performance of the buildings within the Premises.

**15. Insurance.** Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements as required by Section 18 (Insurance) using the internet-based insurance compliance tracking system EXIGIS unless otherwise directed by Port.

**16. Definitions.** Section 44 (Definitions) is revised by deleting and replacing the following terms as shown:

“Expiration Date” means August 1, 2049.

**17. Special Provisions.** Section 42 (Special Provisions) of the Master Lease is deleted and replaced with the following:

**“42. CITY AND PORT REQUIREMENTS.**

The San Francisco Municipal Codes (available at [www.sfgov.org](http://www.sfgov.org)) and City and Port policies described or referenced in this Master Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

42.1 Nondiscrimination.

a. Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

b. Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 42.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

c. Nondiscrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

d. HRC Form. On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

e. Penalties. Tenant understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

42.2. Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at [www.sfgov.org](http://www.sfgov.org). Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.



(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 42.2(a) above.

(c) Tenant understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease.

(d) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(e) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(h) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(i) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(j) Within five (5) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(k) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the

City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

42.3 Local Business Enterprises. The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with HRC to determine appropriate methods for promoting participation by LBEs in the Scope of Work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: [http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist\\_1.htm](http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist_1.htm).

42.4 Resource-Efficient Facilities and Green Building Requirement. Tenant agrees to comply with all applicable provisions of Environment Code Chapter 7 relating to resource-efficiency and green building design requirements.

42.5 Prohibition of Tobacco Sales and Advertising. Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

42.6 Prohibition of Alcoholic Beverages Advertising. Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

42.7 Graffiti Removal. Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "Graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include:

(1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Lease or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

42.8 Waiver of Relocation Assistance Rights. If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 35.1, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 13 relating to Condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

42.9 MacBride Principles Northern Ireland. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

42.10 Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1126 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 the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) 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 six months after the date the contract is approved. Tenant 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 \$50,000 or more. Tenant further acknowledges that, if applicable, the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

42.11 Tropical Hardwood and Virgin Redwood Ban. Port and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to

the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

42.12 Preservative-Treated Wood Containing Arsenic. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

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

42.15 Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

42.16 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. Tenant shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant agrees to cooperate with the City in any action

or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include and shall require its subtenants, and 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. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

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

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

**42.19 Restrictions on the Use of Pesticides.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last

resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>."

#### 42.20 Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12T"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous

place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8."

42.21 Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project 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. Tenant shall cooperate, and require its subtenants 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. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

42.22. San Francisco Bottled Water Ordinance. Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the Premises with attendance of more than 100 people.

42.23 Employee Signature Authorization Ordinance. The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant

shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators.

42.24 **Waiver of Relocation Benefits.** To the extent allowed by applicable Law, Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as specifically provided in this Lease.”

**18. Real Estate Broker's Fees.** Each party represents that it has not dealt with any brokers, as broker, agent or finder in connection with this First Amendment. Each party agrees to hold the other party harmless from all damages, judgments, liabilities and expenses (including reasonable attorneys' fees) arising from any claims or demands of any broker, agent or finder based upon any acts of the other party for any commission or fee alleged to be due in connection with this First Amendment or the exercise of the option provided by this First Amendment.

**19. Recordation.** This Second Amendment will not be recorded by either Party. At the request of either Party, the Parties agree to execute and record in the Official Records a Memorandum of Second Amendment in a form agreeable to the Parties, which shall include, among other customary provisions, a reference to Tenant's Extension Option.

**20. Entire Agreement.** This Second Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Second Amendment are superseded in their entirety by this Second Amendment. No prior drafts of this Second Amendment or changes between those drafts and the executed version of this Second Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Second Amendment.

**21. Miscellaneous.** This Second Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Second Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary or otherwise. This Second Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Second Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. As amended hereby, the Master Lease is hereby ratified and confirmed in all respects. In the event of any inconsistencies between the terms of this Second Amendment and the Master Lease, the terms of this Second Amendment shall prevail. Time is of the essence of this Second Amendment. This Second Amendment shall be governed by the laws of the State of California. Neither this Second Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

**22. Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Master Lease shall remain in full force and effect.

**23. Subject to Board of Supervisor's Approval.** Notwithstanding anything to the contrary contained in this Second Amendment, Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Second Amendment



unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Second Amendment and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Second Amendment be null and void if City's Mayor and the Board of Supervisors do not approve this Second Amendment, in their respective sole discretion. Approval of this Second Amendment 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.

**24. Effective Date.** This Second Amendment is effective upon Port's execution as indicated below. Promptly following the actual Second Amendment Effective Date, Port and Tenant shall execute a memorandum substantially in the form attached hereto as *Exhibit F* confirming the actual Second Amendment Effective Date, but either party's failure to do so shall not affect the commencement of this Second Amendment.

**EXHIBITS AND SCHEDULES**

- EXHIBIT A REVISED LEGAL DESCRIPTION (FROM THIRD TECHNICAL CORRECTION MEMO)**
- EXHIBIT B REVISED SITE PLAN DESCRIPTION (FROM THIRD TECHNICAL CORRECTION MEMO)**
- EXHIBIT C MAP OF BAY 1A AND 1B**
- EXHIBIT D SEAWALL LOCATION MAP**
- EXHIBIT E PORT GUIDELINES**
- EXHIBIT F SECOND AMENDMENT EFFECTIVE DATE MEMORANDUM**

**SCHEDULE 1 FEMA DISCLOSURE NOTICE**

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**IN WITNESS WHEREOF**, Port and Tenant execute this Second Amendment to Master Lease at San Francisco, California, as of the last date set forth below.

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

By: \_\_\_\_\_  
Susan Reynolds, Deputy Director, Real Estate

Date Signed: \_\_\_\_\_

**TENANT: AMB Pier One LLC, a California limited liability company**

By: Prologis, L.P., formerly known as AMB Property, L.P., a Delaware limited partnership, its Manager

By: Prologis, Inc., formerly known as AMB Property Corporation, a Maryland corporation, its General Partner

By: \_\_\_\_\_  
  
Stephen T Lueck, Senior Vice President

Date Signed: \_\_\_\_\_  
2/8/16

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

By: \_\_\_\_\_  
Rona H. Sandler, Deputy City Attorney

Amendment Prepared By: Jay Edwards, Senior Leasing Manager \_\_\_\_\_ (initial)  
Port Commission Reso. No.  
Board of Supervisors Reso. No.

**EXHIBIT A**

**REVISED LEGAL DESCRIPTION  
(FROM THIRD TECHNICAL CORRECTION MEMO)**

**EXHIBIT A**

**PIER 1 LEGAL DESCRIPTION**

Being Pier 1, a former portion of Pier ½, and an adjacent portion of the Embarcadero of the San Francisco Port Commission, City and County of San Francisco, State of California, more particularly described as follows:

**PARCEL 1 – PIER 1 AND BULKHEAD BUILDING**

Commencing at the point of intersection of the monument line of Spear Street with the monument line of Mission Street, as said point is shown on Monument Map sheet 317 of the City and County of San Francisco, Department of Public Works, on file in the office of the Bureau of Street Use and Mapping of said Department of said City and County;

Thence along the northeasterly prolongation of said monument line of Mission Street, N 46° 18' 03" E, 699.07 feet;

Thence N 35° 02' 40" W, 1,242.19 feet, to a point on the westerly prolongation of a line along the southerly edge of the bulkhead building of said Pier 1, said point being the True Point Of Beginning;

Thence continuing N 35° 02' 40" W, 68.80 feet;

Thence S 54° 57' 20" W, 3.50 feet;

Thence N 35° 02' 40" W, 24.50 feet;

Thence N 54° 57' 20" E, 3.50 feet;

Thence N 35° 02' 40" W, 34.00 feet;

Thence S 54° 57' 20" W, 3.50 feet;

Thence N 35° 02' 40" W, 24.50 feet;

Thence N 54° 57' 20" E, 3.50 feet;

Thence N 35° 02' 40" W, 59.38 feet;

Thence N 54° 50' 22" E, 5.81 feet;

Thence S 34° 45' 23" E, 1.35 feet, to a point on the westerly prolongation of a line along the southerly face of the southerly wall of the bulkhead building of Pier 1½;

Thence N 54° 39' 31" E, 46.35 feet along said westerly prolongation and said line to a point on the northerly edge of the concrete deck of Pier 1

Thence along the outer edge of said deck through the following courses:

Thence N 87° 18' 01" E, 27.84 feet;

Thence N 54° 57' 20" E, 678.95 feet to a tangent curve, concave to the south, having a radius of 15.00 feet;

08/07/12  
AMB\_Relinquishment\_Area\_EXHIBITA.doc

Initials:  
Port  
Tenant 

Thence northeasterly, easterly, and southeasterly along said curve, through a central angle of  $90^{\circ} 00' 00''$ , an arc length of 23.56 feet;

Thence  $S 35^{\circ} 02' 40'' E$ , 106.31 feet to a tangent curve, concave to the west, having a radius of 15.00 feet;

Thence Southeasterly, southerly, and southwesterly along said curve, through a central angle of  $90^{\circ} 00' 00''$ , an arc length of 23.56 feet;

Thence tangent to last said curve,  $S 54^{\circ} 57' 20'' W$ , 160.39 feet to a tangent curve, concave to the southeast, having a radius of 313.25 feet;

Thence Southwesterly along said curve, through a central angle of  $11^{\circ} 02' 34''$ , an arc length of 60.37 feet;

Thence tangent to last said curve,  $S 43^{\circ} 54' 46'' W$ , 130.70 feet;

Thence  $S 54^{\circ} 57' 20'' W$ , 211.37;

Thence,  $S 35^{\circ} 02' 40'' E$ , 33.69 feet,

Thence  $S 54^{\circ} 57' 20'' W$ , 123.39 feet;

Thence,  $S 35^{\circ} 02' 40'' E$ , 24.98 feet;

Thence  $S 54^{\circ} 57' 20'' W$ , 25.10 feet;

Thence,  $S 35^{\circ} 02' 40'' E$ , 5.50 feet;

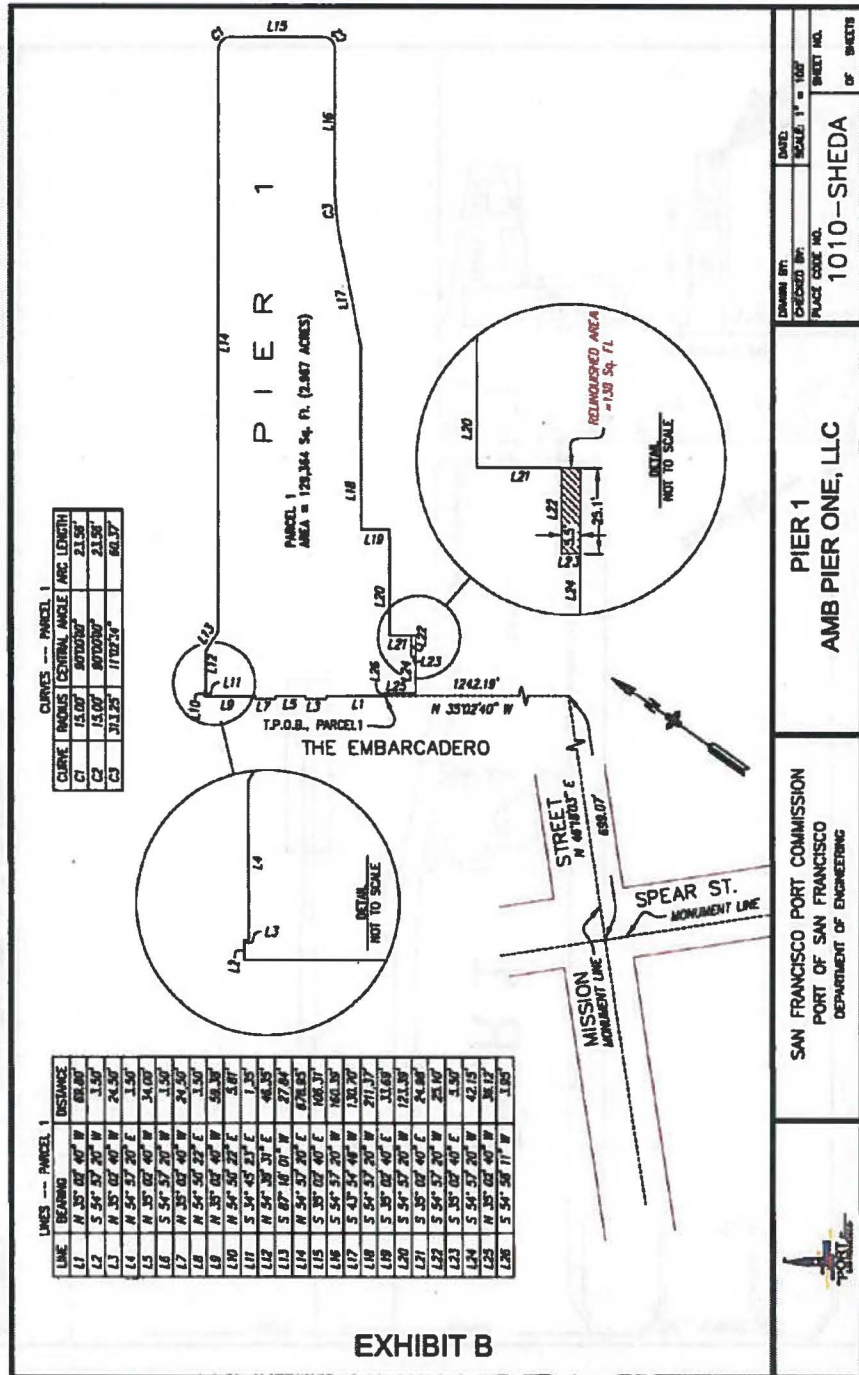
Thence  $S 54^{\circ} 57' 20'' W$ , 42.15 feet;

Thence  $N 35^{\circ} 02' 40'' W$ , 36.12 feet;

Thence  $S 54^{\circ} 58' 11'' W$ , 3.95 feet to the True Point Of Beginning;

Containing 129,346 square feet (2.967 acres), more or less.

**EXHIBIT B  
REVISED SITE PLAN DESCRIPTION  
(FROM THIRD TECHNICAL CORRECTION MEMO)**

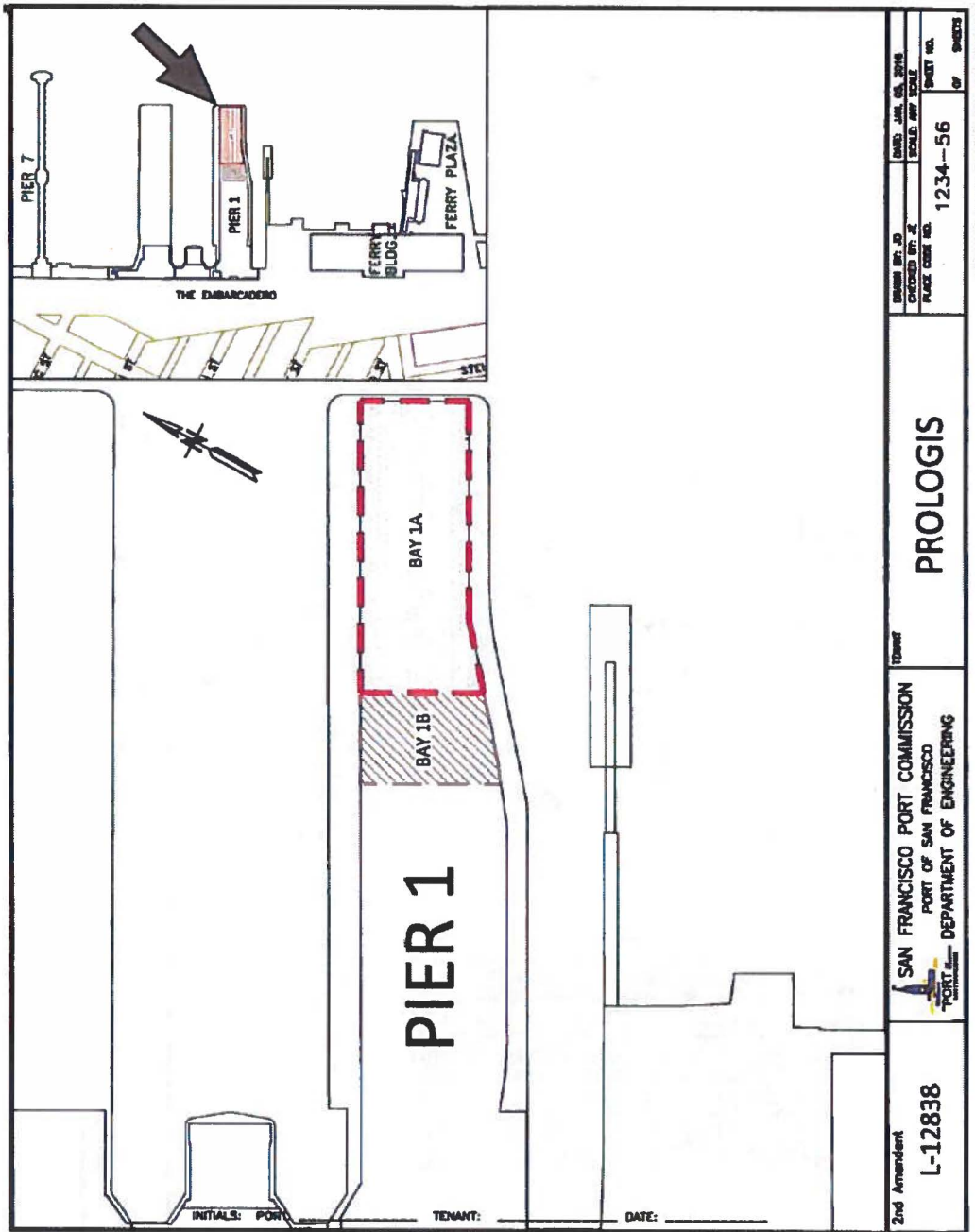


DATE: 10/27/10	SCALE: 1" = 100'
DRAWN BY: [Signature]	CHECKED BY: [Signature]
PROJECT NO. 1010-SHEDA	SHEET NO. [ ] OF [ ] SHEETS
<b>PIER 1 AMB PIER ONE, LLC</b>	
SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	

**EXHIBIT B**

Initials:  
Port  
Tenant *[Signature]*

**EXHIBIT C**  
**MAP OF BAY 1A AND 1B**



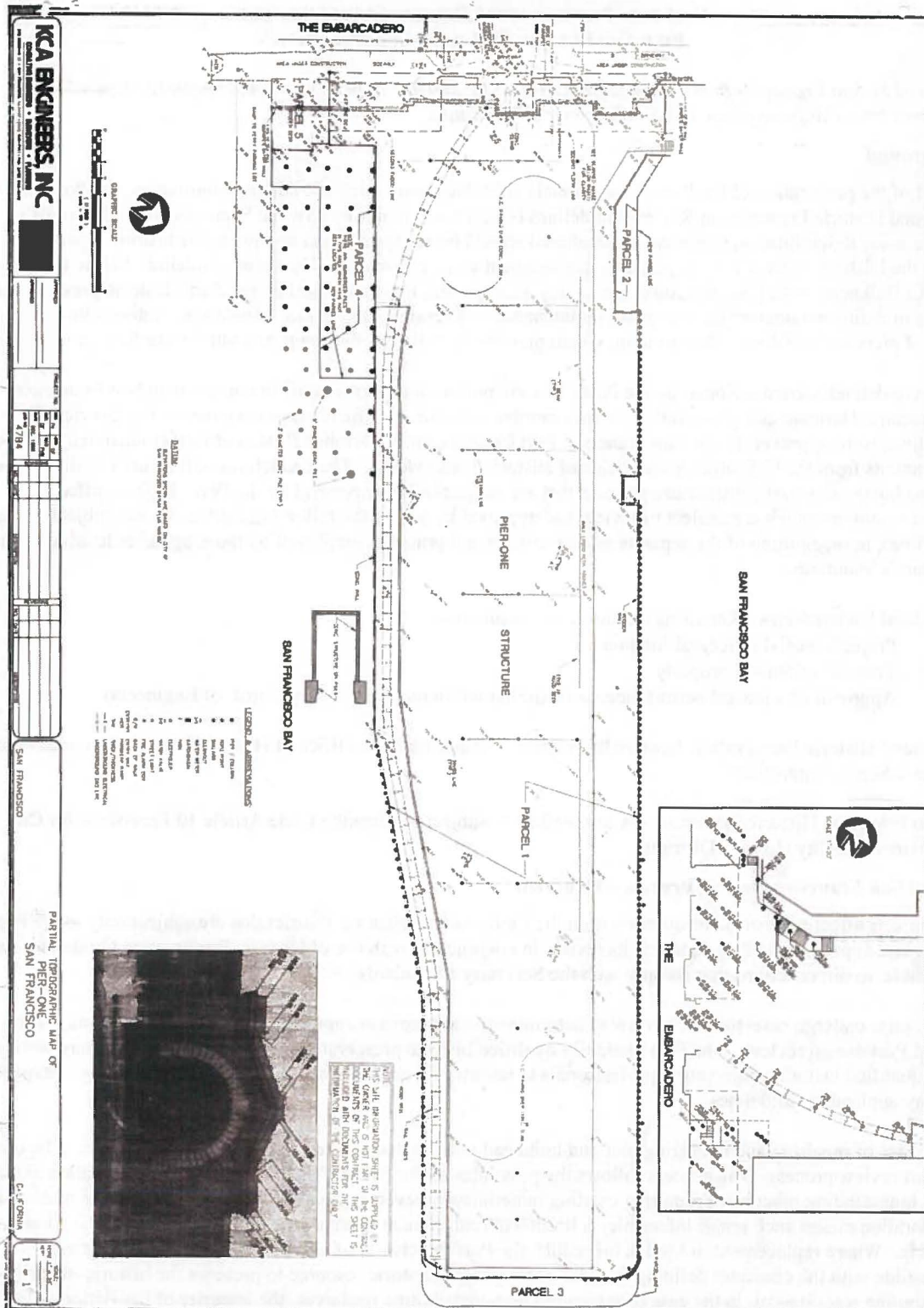
2nd Amendment <b>L-12838</b>	<b>SAN FRANCISCO PORT COMMISSION</b> PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	<b>PROLOGIS</b>	SHEET NO. 1234-56 OF SHEETS
			DRAWN BY: J.D. CHECKED BY: J.E. SCALE: 1"=40'

12/28/16  
 Initials  
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 Port  
 Tenant ST

# EXHIBIT D

## SEAWALL LOCATION MAP



## EXHIBIT E

### PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES

*Approved by San Francisco Port Commission, October 26, 2004, with proposed amendments to respond to comments from California State Office of Historic Preservation.*

#### **Background**

As part of the preparation of the Port of San Francisco Embarcadero Historic District nomination, the Port has developed Historic Preservation Review Guidelines (Guidelines) to define how the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards) should be interpreted and applied to the historic resources within the District, to ensure its responsible management and stewardship. The set of Guidelines below focuses on Pier and Bulkhead Wharf Substructures, providing an important tool to be used by the Port's historic preservation experts to define parameters for the repair, maintenance or alterations to the pile foundations, substructures and decks of piers and bulkhead wharves upon which pier sheds, bulkhead buildings and other waterfront structures sit.

These Guidelines were developed by the Port's historic preservation expert staff in concert with San Francisco Architectural Heritage and preservation experts familiar with the specific historic resources in the District. The Guidelines were approved by the San Francisco Port Commission in October 2004, and further amended to respond to comments from the California State Office of Historic Preservation. The Guidelines will be used in the review of pier and bulkhead wharf substructure projects that are subject only to approval by the Port. Projects affecting District resources which are subject to review and approval by any of the following entities are not subject to these Guidelines, in recognition of the separate review criteria and practices employed by those agencies to administer the Secretary's Standards:

- 1) Federal Undertakings - Requiring Section 106 consultation
  - Projects receiving federal funding
  - Transfer of federal property
  - Approval of a federal permit, license or similar entitlement (i.e. Army Corps. of Engineers)
- 2) Federal Historic Preservation Tax Credit Projects – Requiring State Office of Historic Preservation and National Park Service approvals
- 3) San Francisco Historic Preservation Commission – Subject to Planning Code Article 10 Provisions for City Landmarks and City Historic Districts

#### **Port of San Francisco Review Process – Overview**

For projects affecting historic resources within the Embarcadero Historic District that are subject only to the Port's review and approval, the Port conducts its review in conjunction with use of Historic Preservation Guidelines, where applicable, to direct actions that comply with the Secretary's Standards.

All projects undergo case-specific review to determine the appropriate application of the Guidelines and other related Port design reviews. The Port maintains qualified historic preservation expertise on staff and may work with other qualified historic preservation professionals to review projects for consistency with the Secretary's Standards and any applicable Guidelines.

In the case of repairing and managing pier and bulkhead wharf substructures, the Guidelines below are to be used in the Port review process. The process follows the principles of the Secretary's Standards for Rehabilitation and the Port's longstanding practice of repairing existing materials wherever feasible. Replacement of historic materials, if deterioration makes such repair infeasible, is limited to replacement in-kind (use of the same materials) whenever possible. Where replacement in-kind is infeasible, the Port directs use of new substitute materials that are compatible with the character defining features of the subject historic resource to preserve the historic integrity of contributing resources or, in the case of reviewing non-contributing resources, the integrity of the Historic District.



**Pier and Bulkhead Wharf Substructures**

The historic piers and resources in the Embarcadero Historic District are made up of pile-supported platforms upon which pier shed and bulkhead building structures were built to conduct maritime commerce. The substructure of the piers and bulkhead wharf, described in detail in Section 7 of the Embarcadero Historic District nomination, consists of vertically driven piles, topped by stringer and pile cap beams, which create the horizontal structural framework upon which pier decks rest. Beneath these structures, the tides of the San Francisco Bay ebb and flow. Pier substructures are defined to include pier aprons, which are constructed at the perimeter of piers, generally used to provide a pile-supported platform for ship berthing, an outdoor work area, and in more recent times a public access and recreation area. In most instances, pier aprons are constructed of wood and have a shorter life span, historically requiring more maintenance and repair than steel and concrete substructures.

Within this complex, the bulkhead wharf is an important feature. It is comprised of 23 individual sections that extend end to end throughout the historic district, adjacent and connected to the Seawall, which establishes the constructed edge of the waterfront between piers. In addition, the bulkhead wharf plays an important role in defining the Embarcadero's urban form, which supports maritime, public access and commercial recreation/retail functions.

Initials:  
Port \_\_\_\_\_  
Tenant SR

**EXHIBIT F**

**SECOND AMENDMENT EFFECTIVE DATE MEMORANDUM**

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

Tenant:

Lease Number:

Second Amendment Date:

Premises: [ \_\_\_\_\_, Suite \_\_\_\_\_ ]  
San Francisco, California

The Second Amendment Effective Date is established as \_\_\_\_\_, 20\_\_ and the  
Expiration Date is August 1, 2049.

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

By: \_\_\_\_\_  
Susan Reynolds  
Deputy Director, Real Estate

Date Signed: \_\_\_\_\_

Tenant:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**SCHEDULE 1**  
**FEMA Disclosure Notice**

The Federal Emergency Management Agency ("FEMA") is performing detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline within the nine San Francisco Bay Area counties that will provide flood and wave data for the City and County of San Francisco's Flood Insurance Study report and Flood Insurance Rate Maps ("FIRMs"). This process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront.

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

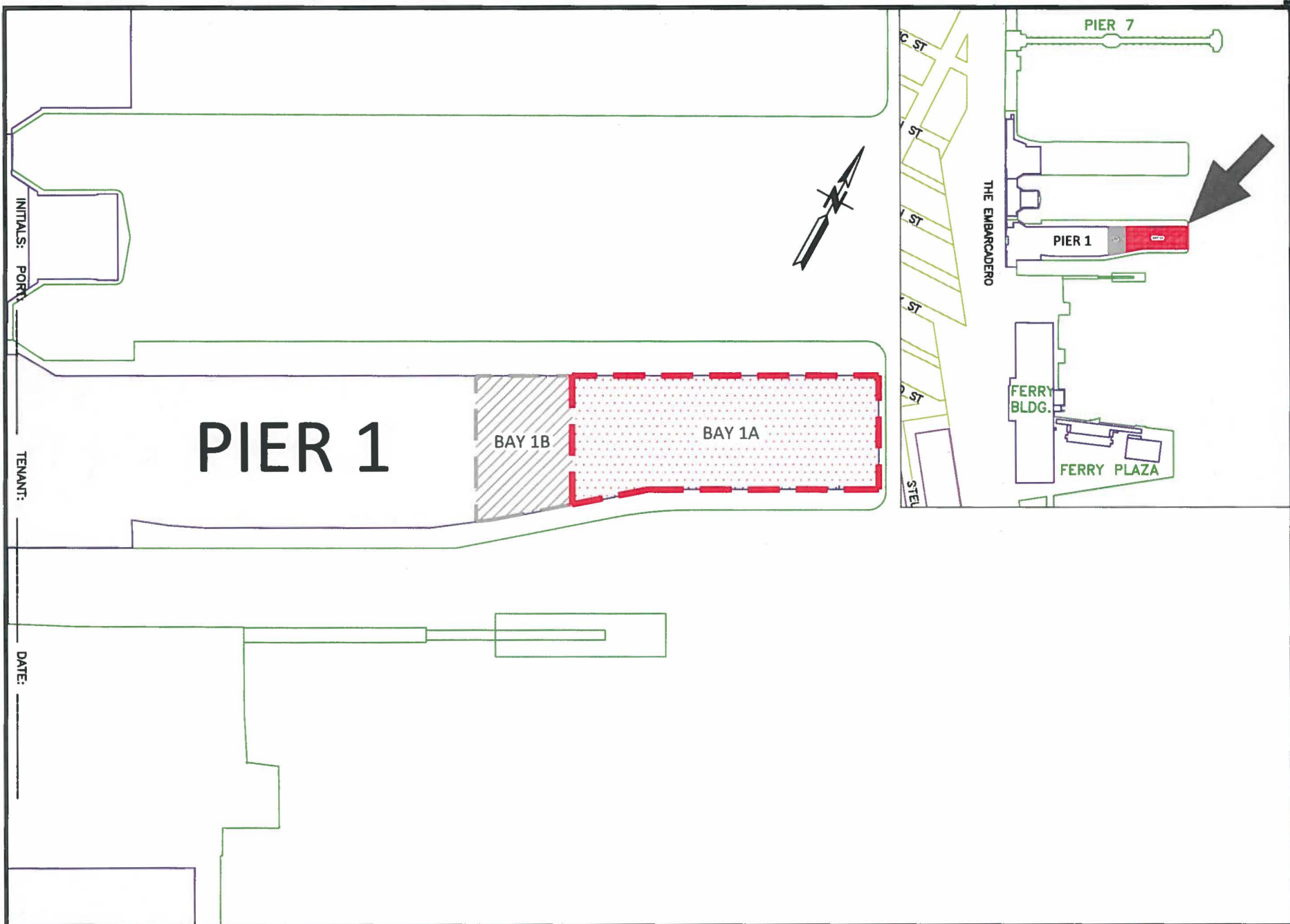
On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.


On May 7, 2013, FEMA conducted a Flood Risk Review meeting in San Francisco. The community was provided with a 60-day comment period to review and comment on the draft FIRMs. The comment period ended on July 6, 2013. On November 12, 2015, FEMA issued the preliminary FIRMs and Flood Insurance Study (FIS) report, and the GIS database for the City and County of San Francisco. These will be subject to comment and appeal before becoming final in 2016 (anticipated). The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following link:

<http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=38&choProj=260>

Initials:  
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 **SAN FRANCISCO PORT COMMISSION**  
 PORT OF SAN FRANCISCO  
 DEPARTMENT OF ENGINEERING

TENANT  
**PROLOGIS**

DRAWN BY: JD  
 CHECKED BY: JE  
 PLACE CODE NO.

DATE: JAN. 05, 2016  
 SCALE: ANY SCALE  
 SHEET NO.  
 OF SHEETS

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