

**THIRD AMENDMENT TO
ARMY BASE GATEWAY REDEVELOPMENT PROJECT
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT**

among

THE CITY OF OAKLAND

“City”

and

PROLOGIS CCIG OAKLAND GLOBAL, LLC

“Prologis/CCIG”

and

OAKLAND BULK AND OVERSIZED TERMINAL, LLC

“OBOT”

and

CCIG OAKLAND GLOBAL, LLC

“CCIGOG”

and

PROLOGIS MESQUITE, LLC

“PROLOGIS”

COPY

Dated: February 16, 2016

THIRD AMENDMENT TO
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

This Third Amendment to Lease Disposition and Development Agreement (“**Third Amendment**”) is entered into as of the date listed on the title page of this Third Amendment (the “**Effective Date**”) by and among the CITY OF OAKLAND, an independent municipal corporation (“**City**”), PROLOGIS CCIG OAKLAND GLOBAL, LLC, a Delaware limited liability company (“**Prologis/CCIG**”), OAKLAND BULK AND OVERSIZED TERMINAL, LLC, a California limited liability company (“**OBOT**”), CCIG OAKLAND GLOBAL, LLC (“**CCIGOG**”), a California limited liability company, and PROLOGIS MESQUITE, LLC, a Delaware limited liability company (“**Prologis**”) (each individually referred to a “**Party**” and collectively referred to as the “**Parties**”). OBOT, CCIGOG and Prologis are collectively referred to herein as the “**Developer**” or “**Developer Parties**” and individually as “**Developer Party**.”

RECITALS

- A. On December 4, 2012, the Lease Disposition and Development Agreement entered into by the City, Prologis/CCIG and the Oakland Redevelopment Successor Agency (“**ORSA**”), which addresses redevelopment on portions of the former Oakland Army Base (the “**Original LDDA**”), became effective.
- B. Pursuant to ORSA Resolution No. 2013-020, approval of the Oakland Oversight Board, Department of Finance, and California State Lands Commission, on August 30, 2013 by quitclaim deed recorded as Document No. No. 2013-295093, ORSA transferred the portion of the former Army base then owned by ORSA (known as Parcel E) to the City of Oakland along with all of ORSA’s rights or obligations relating to the former Oakland Army Base, and thereafter had no further rights or obligations under the Original LDDA.
- C. On or about October 17, 2013, the City and Prologis/CCIG entered into that certain First Amendment to Lease Disposition and Development Agreement (the “**First Amendment**”). On or about December 3, 2013, the City and Prologis/CCIG entered into that certain Second Amendment to Lease Disposition and Development Agreement (the “**Second Amendment**”). The Original LDDA, as amended by the provisions of the First Amendment and Second Amendment, is referred to herein as the “**LDDA**.” Capitalized terms not otherwise defined in this Third Amendment shall have the same meaning set forth in the LDDA.
- D. Pursuant to the Partial Assignment and Assumption (West Gateway) Agreement between the City, Prologis/CCIG and OBOT dated June 13, 2014, Prologis/CCIG assigned and delegated its rights and obligations under the LDDA with respect to the West Gateway to OBOT, OBOT accepted such assignment and delegation, and the City consented to the assignment and delegation.
- E. On or about November 4, 2014, the Parties approved a Mid-Project Budget Revision (the “**MPBR**”) which reallocated the funds previously allocated pursuant to the G-Max Price Budget and the Soft Cost Budget with the intent to accelerate the delivery of the East

Gateway and allow for the early Close of Escrow on the West Gateway and the MH-1 Lease Area (defined below).

- F. Pursuant to Ordinance No. 13283 C.M.S. dated December 16, 2014, the City Council approved a series of actions to implement the MPBR, including authorizing the City Administrator to negotiate and execute a third amendment to the Original LDDA consistent with the term sheet provided as Attachment B to the Staff Report dated November 19, 2014 (“**Term Sheet**”).
- G. Among other things, the Term Sheet provided that CCIGOG may be a permitted transferee with respect to MH-1 Lease Area, a subarea of the Central Gateway and further defined in Section 1 below, provided it satisfies the applicable partial transfer requirements of the Original LDDA Section 7.4.
- H. CCIGOG has satisfied the partial transfer requirements and the City, Prologis/CCIG and CCIGOG are prepared to enter into a Partial Assignment and Assumption Agreement (1) assigning and delegating Prologis/CCIG’s rights and obligations under the LDDA with respect to the MH-1 Lease Area to CCIGOG and (2) enabling CCIGOG to be a Party to this Agreement.
- I. Among other things, Section 7.3 of the Original LDDA provided that a Developer Affiliate Controlled by Prologis may be the Tenant for the Ground Leases for the East Gateway and the Central Gateway, provided it satisfies the applicable partial transfer requirements of the Original LDDA Section 7.4.
- J. Prologis has satisfied the partial transfer requirements and the City, Prologis/CCIG and Prologis are prepared to enter into a Partial Assignment and Assumption Agreement (1) assigning and delegating Prologis/CCIG’s rights and obligations under the LDDA with respect to the East Gateway and the New Central Gateway (a subarea of the Central Gateway and further defined in Section 1 below) to Prologis and (2) enabling Prologis to be a Party to this Agreement.
- K. Consistent with the Term Sheet, the Parties have entered into this Third Amendment to amend certain provisions of the LDDA as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and mutual obligations contained in the LDDA and this Third Amendment, the City and the Developer Parties agree to amend the LDDA as follows:

Where this Third Amendment shows changes to the existing language of the LDDA, new text is indicated in double underline and deleted text is indicated in ~~strikeout~~. The LDDA otherwise remains in full force and effect in accordance with its terms. References in this Third Amendment to provisions of the Original LDDA, First Amendment or Second Amendment shall be interpreted as referring to such provisions as subsequently amended by the applicable provisions of the First Amendment, Second Amendment or this Third Amendment.

1. Phases. The Original LDDA identified three (3) areas of the Lease Property to be subject to separate Ground Leases: the West Gateway, the Central Gateway and the East Gateway. The West Gateway may be leased in sub-phases as described in Section 6.1.1 of the Original LDDA. The Central Gateway is hereby divided into the two (2) areas shown on Schedule 1 as the “**MH-1 Lease Area**” and the “**New Central Gateway Lease Area**,” which may be ground leased pursuant to Sections 6 and 8 below. The East Gateway is hereby divided into the two (2) subareas shown on Schedule 1 as the “**CE-1 Lease Area**” and the “**CE-2 Lease Area**,” which may be ground leased together as the East Gateway or separately pursuant to Sections 7.2 and 7.3 below. The CE-1 Lease Area and the CE-2 Lease Area are collectively referred to herein as the “**East Gateway**.” Each of the East Gateway (as may include the CE-1 Lease Area, the CE-2 Lease Area), the MH-1 Lease Area, the New Central Gateway Lease Area and the West Gateway are referred to herein as a “**Phase**” and such areas are collectively referred to herein as the “**Phases**.”

1.1 Security Deposit. The City hereby acknowledges the timely receipt of the \$500,000 cash Security Deposit pursuant to the requirements of the LDDA as set forth in Section 1.4.1 of the Original LDDA. Sections 1.4.2, 1.4.3 and 1.4.4 of the Original LDDA are hereby deleted and replaced with the following language:

“1.4.2 Application at Closing; Reduction of Amount of Security Deposit. The Parties acknowledge and agree that the Security Deposit shall be reduced by the applicable pro rata amount, based on acreage, set forth herein for each Phase at each Close of Escrow and, such amount shall be credited against the security deposit required under each applicable Ground Lease. The pro rata amounts of the Security Deposit are as follows: (i) for the West Gateway, ~~\$158,360~~ONE HUNDRED AND SIXTY THOUSAND EIGHT HUNDRED AND THIRTY DOLLARS AND FIFTY ONE CENTS (\$160,830.51), which amount includes ~~\$36,604~~THIRTY NINE THOUSAND THREE HUNDRED AND NINE DOLLARS AND TWENTY CENTS (\$39,309.20) that may be allocated to the Railroad R/O/W Property, as that term is defined in the Ground Lease (“**WGW Security Deposit Allocation**”); (ii) for the East Gateway, ~~\$142,758~~ONE HUNDRED AND FORTY ONE THOUSAND TWO HUNDRED FORTY DOLLARS AND EIGHTY FOUR CENTS (\$141,240.84) (“**EGW Security Deposit Allocation**”), which amount includes \$75,431 that may be allocated to the CE-1 Lease Area (“**CE-1 Security Deposit Allocation**”) and \$67,327 that may be allocated to the CE-2 Lease Area (“**CE-2 Security Deposit Allocation**”); (iii) for the MH-1 Lease Area, \$68,330 (“**MH-1 Security Deposit Allocation**”); and (iv) for the New Central Gateway Lease Area, \$130,550 (“**NCGW Security Deposit Allocation**”).

1.4.3 Partial Application of the Security Deposit Related to Developer’s Default or Failure to Close on a Particular Phase.

1.4.3.1 OBOT/CCIGOG Default. If ~~Developer~~ OBOT is obligated pursuant to the terms of this Agreement to Close Escrow on the West Gateway and fails to do so or CCIGOG is obligated pursuant to the terms of this Agreement to Close Escrow on the MH-1 Lease Area and fails to do so (each after application of the applicable notice and cure provisions), then, pursuant to Section 9.3, the City shall be entitled to retain both the WGW Security Deposit

Allocation and the MH-1 Security Deposit Allocation to the extent the Security Deposit has not been previously reduced at the Close of Escrow on either the West Gateway or MH-1 Lease Area, as applicable.

1.4.3.2 Prologis Default. If ~~the Developer Prologis~~ is obligated pursuant to the terms of this Agreement to close Escrow on either the New Central Gateway Lease Area or East Gateway (or, if applicable, the CE-1 Lease Area, the CE-2 Lease Area) and fails to do so (each after application of the applicable notice and cure provisions), then, pursuant to Section 9.3, the City shall be entitled to retain both the EGW Security Deposit Allocation and the NCGW Security Deposit Allocation unless to the extent the Security Deposit has not been previously reduced at the Close of Escrow on the CE-1 Lease Area, the CE-2 Lease Area or the New Central Gateway Lease Area, as applicable.

For illustration purposes only, if ~~the Developer Prologis~~ Closed Escrow on the New Central Gateway Lease Area such that the Security Deposit has been reduced by the amount of the NCGW Security Deposit Allocation, but later fails to Close Escrow on the East Gateway, the City would be entitled to only the EGW Security Deposit Allocation.

1.4.4 Disbursement of the Security Deposit Upon Termination/Expiration. If this Agreement terminates or expires prior to the Close of Escrow on all ~~three (3)~~ four (4) Phases, the Security Deposit (or remaining portion thereof) shall be disbursed as follows: (i) if this Agreement is terminated due to Developer's default hereunder (after application of the applicable notice and cure periods), the provisions of Sections 1.4.3 and 9.3 shall apply; and (ii) in all other events, the Security Deposit (or remaining portion thereof) shall be returned to Developer."

1.2 Agreement to Ground Lease the Lease Property. The lease phasing under the LDDA is revised to reflect four (4) phases as follows:

1.2.1 The first paragraph of Section 6.1 of the Original LDDA is hereby deleted and replaced with the following language:

"Subject to the terms, covenants and conditions of this Agreement, the City agrees to lease the Lease Property to the applicable Developer Party for the development of the Private Improvements, all in accordance with the terms and conditions set forth in this Agreement. Subject to the provisions of Sections 6.1.1 and 6.1.2, the Close of Escrow shall occur in ~~three~~ four (4) Phases, one each for the East Gateway, the MH-1 Lease Area, the New Central Gateway Lease Area, and the West Gateway, each after the satisfaction (or written waiver, where applicable) of the applicable conditions precedent, within the time periods specified in Section 6.6, and pursuant to the provisions of this Agreement."

1.2.2 Section 6.1 of the Original LDDA is hereby amended by adding the following language as Section 6.1.2:

“6.1.2 East Gateway Sub-Phasing. The Parties agree that, at the request of, and solely as an accommodation to, Prologis, the City hereby grants to Prologis the right, exercisable by Prologis, at its sole election, to ground lease the East Gateway in either one (1) or two (2) Phases (each, an **“EGW Sub-Phase”**), which election may be exercised by Prologis by its delivering of written notice of such election to the City (the **“EGW Sub-Phase Notice”**) on or before the date that is thirty (30) calendar days after Prologis receives the six (6) month Notice of Completion of Public Improvements for the East Gateway pursuant to Section 3.5.2. Prologis’ exercise of its election under this Section and the Parties’ execution of the CE-1 Ground Lease (defined below) shall in no way delay or extend the Close of Escrow for the East Gateway. If Prologis delivers its EGW Sub-Phase Notice within such time period, then the following shall apply:

6.1.2.1 Lease Premises. The ground lease for first EGW Sub-Phase shall include only the CE-1 Lease Area (the **“CE-1 Ground Lease”**) and the ground lease for the second EGW Sub-Phase shall include the CE-2 Lease Area (the **“CE-2 Ground Lease”**).

6.1.2.2 Timing of Close of Escrow. The Parties shall Close Escrow on the CE-1 Ground Lease on or before the date that is thirty (30) calendar days after the City’s receipt of the EGW Sub-Phase Notice.

6.1.2.3 Procedure for CE-1 Ground Lease Close of Escrow. The procedure for the Close of Escrow for the CE-1 Ground Lease shall be as set forth in Section 6.8.2 with respect to the East Gateway, provided, however:

(a) Any waiver of a condition precedent set forth in Section 6.4 shall be solely with respect to the CE-1 Lease Area;

(b) The CE-1 Ground Lease shall be in the form required by Section 7.6 of the Third Amendment;

(c) The balance of the Closing deliverables (including documents and funds) shall be modified to exclude the CE-2 Lease Area;

(d) The CE-1 Security Deposit Allocation shall be credited to the security deposit due under the CE-1 Ground Lease; and

(e) The Minimum Project obligations under the CE-1 Ground Lease shall be as set forth in Section 7.2.3 of the Third Amendment;

6.1.2.4 Procedure for CE-2 Ground Lease Close of Escrow. The procedure for the Close of Escrow for the CE-2 Ground Lease shall be as set forth in Section 6.8.2 with respect to the East Gateway, provided, however:

(a) Any waiver of a condition precedent set forth in Section 6.4 shall be solely with respect to the CE-2 Lease Area;

(b) The CE-2 Ground Lease shall be in the form required by Section 7.6 of the Third Amendment;

(c) The balance of the Closing deliverables (including documents and funds) shall be modified to exclude the CE-1 Lease Area;

(d) The CE-2 Security Deposit Allocation shall be credited to the security deposit due under the CE-2 Ground Lease; and

(e) The Minimum Project obligations under the CE-2 Ground Lease shall be as set forth in Section 7.3.3 of the Third Amendment.

6.1.2.5 East Gateway Cross-Default. Notwithstanding any term or provision set forth in this Agreement to the contrary, Prologis' right to Close Escrow on the CE-2 Ground Lease shall be cross defaulted with the CE-1 Ground Lease such that if the City terminates the CE-1 Ground Lease with respect to any portion of the CE-1 Lease Area as a result of the tenant's uncured default thereunder, such event shall automatically be deemed a non-curable default under this Agreement with respect to the Close of Escrow on the CE-2 Ground Lease and, without limiting any other rights or remedies of the City under this Agreement, shall automatically terminate any and all Prologis' right to Close Escrow at any time on the CE-2 Ground Lease."

1.3 Conditions Precedent. To reflect the revised lease phasing, the Parties agree to revise the City's Obligations to Close Escrow of the LDDA (Section 6.2 of the Original LDDA) as follows:

1.3.1 To delete Sections 6.2.14 and 6.2.15 of the Original LDDA and replace such provisions with the following language:

"6.2.14 New Central Gateway Ground Lease. With respect to the East Gateway or, if applicable, the CE-1 Lease Area and the CE-2 Lease Area, if Prologis has previously Closed Escrow on the New Central Gateway Ground Lease, there shall be no uncured Event of Default (as defined in such Ground Lease) with respect to Prologis' obligations under the New Central Gateway Ground Lease as of the Closing Date for the East Gateway or, if applicable, the CE-1 Lease Area and the CE-2 Lease Area.

6.2.15 East Gateway or CE-1/CE-2 Ground Leases. With respect to the New Central Gateway Lease Area only, if Prologis has previously Closed Escrow on the East Gateway Ground Lease or, if applicable, the CE-1 Ground Lease or CE-2 Ground Lease, there shall be no uncured Event of Default (as defined in such Ground Leases) with respect to Prologis' obligations under, as applicable, the East Gateway Ground Lease, the CE-1 Ground Lease or the CE-2 Ground Lease, as of the Closing Date for the New Central Gateway Lease Area."

1.3.2 To add the following language:

“6.2.16 MH-1 Ground Lease. With respect to the West Gateway only, if CCIGOG has previously Closed Escrow on the MH-1 Ground Lease, there shall be no uncured Event of Default (as defined in such Ground Lease) with respect to CCIGOG’s obligations under the MH-1 Ground Lease as of the Closing Date for the West Gateway.

6.2.17 West Gateway Ground Lease. With respect to the MH-1 Lease Area only, if OBOT has previously Closed Escrow on the West Gateway Ground Lease, there shall be no uncured Event of Default (as defined in such Ground Lease) with respect to OBOT’s obligations under the West Gateway Ground Lease as of the Closing Date for the MH-1 Lease Area.”

1.3.3 To delete Sections 6.2.4 and 6.4.3 of the Original LDDA.

1.4 Permitted Transfers. To reflect the revised lease phasing, the Parties agree to revise the LDDA permitted transfer provisions (Section 7 of the Original LDDA). Specifically, Section 7.3 of the Original LDDA is hereby deleted and replaced with the following language:

“7.3 The Parties acknowledge and agree that this Agreement authorizes the following as “**Permitted Transfers**”: (a) OBOT/CCIG, or a CCIG-an OBOT Affiliate Controlled by CCIG/OBOT, may be the Tenant under the Ground Lease for the West Gateway; (b) CCIGOG, or a CCIGOG Affiliate Controlled by CCIGOG, may be the Tenant under the Ground Lease for the MH-1 Lease Area, and (c) Prologis, or a Prologis Developer-Affiliate Controlled by Prologis may be the Tenant under the Ground Leases for the East Gateway (or, if applicable, the CE-1 Lease Area and the CE-2 Lease Area) or the New Central Gateway Lease Area.”

1.5 Liquidated Damages. To reflect the revised lease phasing, the Parties agree to revise the liquidated damages provisions (Section 9.3 of the Original LDDA). Specifically, Section 9.3 of the Original LDDA is hereby deleted and replaced with the following language:

“9.3 DEVELOPER ACKNOWLEDGES AND AGREES THAT DEVELOPER’S OBLIGATION TO CLOSE ESCROW UNDER THIS AGREEMENT IS A MATERIAL CONSIDERATION FOR THE CITY’S AGREEMENT TO ENTER INTO THIS AGREEMENT. SUBJECT TO NOTICE AND EXPIRATION OF APPLICABLE CURE PERIODS AND ANY PERMITTED EXTENSIONS OF TIME AS PROVIDED IN SECTION 9.2, THE PARTIES AGREE THAT IF DEVELOPER OBOT FAILS TO PAY THE FUNDS REQUIRED WITH RESPECT TO THE DEVELOPER-FUNDED OBOT WHARF AND RAIL IMPROVEMENTS PURSUANT TO SECTION 3.3.1.1.2 OR THE APPLICABLE DEVELOPER PARTY FAILS TO CLOSE ESCROW AS REQUIRED UNDER ARTICLE VI, THE CITY WILL SUFFER DAMAGES AND THAT IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, THE PARTIES AGREE THAT, CONSIDERING ALL THE CIRCUMSTANCES

EXISTING ON THE DATE OF AGREEMENT, IN THE EVENT ~~DEVELOPER~~ OBOT FAILS TO PAY THE FUNDS REQUIRED WITH RESPECT TO THE ~~DEVELOPER FUNDED~~ OBOT WHARF AND RAIL IMPROVEMENTS PURSUANT TO SECTION 3.3.1.1.2 OR THE APPLICABLE DEVELOPER PARTY FAILS TO CLOSE ESCROW AS REQUIRED UNDER ARTICLE VI, THE APPLICABLE DEVELOPER PARTY SHALL PAY THE FOLLOWING AMOUNTS (“LIQUIDATED DAMAGES”) TO CITY, AS LIQUIDATED DAMAGES, WITHIN THIRTY (30) DAYS FOLLOWING CITY’S WRITTEN DEMAND THEREFOR, IN CASH OR OTHER IMMEDIATELY AVAILABLE FUNDS:

~~VX. IF THE~~ DEFAULT IS WITH RESPECT TO (1) THE FAILURE TO PAY THE FUNDS REQUIRED WITH RESPECT TO THE ~~DEVELOPER FUNDED~~ OBOT WHARF AND RAIL IMPROVEMENTS PURSUANT TO SECTION 3.3.1.1.2 OR (2) THE FAILURE TO CLOSE ESCROW FOR THE WEST GATEWAY: (i) IF CCIGOG HAS PREVIOUSLY CLOSED ESCROW FOR THE MH-1 LEASE AREA, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE ONE MILLION SIX HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND FIVE DOLLARS AND ELEVEN CENTS (\$1,608,305.11) (“WGW ONLY LIQUIDATED DAMAGES”), AND (ii) IF CCIGOG HAS NOT PREVIOUSLY CLOSED ESCROW ON THE MH-1 LEASE AREA, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE TWO MILLION TWO HUNDRED EIGHTY EIGHT THOUSAND FOUR HUNDRED AND EIGHT DOLLARS AND TWENTY SEVEN CENTS (\$2,288,408.27) (“WGW/MH-1 LIQUIDATED DAMAGES”)

~~W. IF THE~~ DEFAULT IS WITH RESPECT TO THE FAILURE TO CLOSE ESCROW FOR THE MH-1 LEASE AREA: (i) IF OBOT HAS PREVIOUSLY CLOSED ESCROW FOR THE WEST GATEWAY, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE SIX HUNDRED EIGHTY THOUSAND ONE HUNDRED AND THREE DOLLARS AND SIXTEEN CENTS (\$680,103.16) (“MH-1 ONLY LIQUIDATED DAMAGES”), AND (ii) IF OBOT HAS NOT PREVIOUSLY CLOSED ESCROW ON THE WEST GATEWAY, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE THE AMOUNT OF THE WGW/MH-1 LIQUIDATED DAMAGES;

~~XY. IF THE~~ DEFAULT IS WITH RESPECT TO FAILURE TO CLOSE ESCROW FOR THE NEW CENTRAL GATEWAY LEASE AREA; (1) IF PROLOGIS DEVELOPER HAS PREVIOUSLY CLOSED ESCROW FOR THE EAST GATEWAY, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE ONE MILLION TWO HUNDRED NINETY NINE THOUSAND ONE HUNDRED EIGHTY THREE DOLLARS AND THIRTY SEVEN CENTS (\$1,299,183.37) (“NCGW ONLY LIQUIDATED DAMAGES”), (2) IF PROLOGIS HAS PREVIOUSLY CLOSED ESCROW ON THE CE-1 LEASE AREA, BUT HAS NOT PREVIOUSLY CLOSED ESCROW ON THE CE-2 LEASE AREA, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL

BE ONE MILLION NINE HUNDRED SIXTY FIVE THOUSAND THREE HUNDRED AND FORTY THREE DOLLARS AND EIGHTY FIVE CENTS (\$1,965,343.85) (“NCGW/CE-2 LIQUIDATED DAMAGES”), AND (3) IF PROLOGIS DEVELOPER HAS NOT PREVIOUSLY CLOSED ESCROW ON THE EAST GATEWAY THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE TWO MILLION SEVEN HUNDRED ELEVEN THOUSAND FIVE HUNDRED NINETY ONE DOLLARS AND SEVENTY THREE CENTS (\$2,711,591.73) (“NCGW/EGW LIQUIDATED DAMAGES”);

YZ. IF THE DEFAULT IS WITH RESPECT TO FAILURE TO CLOSE ESCROW FOR THE EAST GATEWAY; (1) IF PROLOGIS DEVELOPER HAS PREVIOUSLY CLOSED ESCROW FOR THE NEW CENTRAL GATEWAY LEASE AREA, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE ONE MILLION FOUR HUNDRED AND TWELVE THOUSAND FOUR HUNDRED AND EIGHT DOLLARS AND THIRTY SIX CENTS (\$1,412,408.36) (“EGW ONLY LIQUIDATED DAMAGES”), AND (2) IF PROLOGIS DEVELOPER HAS NOT PREVIOUSLY CLOSED ESCROW ON THE NEW CENTRAL GATEWAY LEASE AREA, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE THE AMOUNT OF THE NCGW/EGW LIQUIDATED DAMAGES, SET FORTH ABOVE IN SUBSECTION XY; AND

Z. DEFAULT WITH RESPECT TO FAILURE TO CLOSE ESCROW FOR THE CE-2 LEASE AREA: (1) IF PROLOGIS HAS PREVIOUSLY CLOSED ESCROW FOR THE CE-1 LEASE AREA AND THE NEW CENTRAL GATEWAY LEASE, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE SIX HUNDRED SIXTY SIX THOUSAND ONE HUNDRED SIXTY DOLLARS AND FORTY EIGHT CENTS (\$666,160.48) (“CE-2 ONLY LIQUIDATED DAMAGES”), AND (2) IF DEVELOPER HAS PREVIOUSLY CLOSED ESCROW FOR THE CE-1 LEASE AREA BUT HAS NOT PREVIOUSLY CLOSED ESCROW ON THE NEW CENTRAL GATEWAY LEASE AREA, THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE THE AMOUNT OF THE NCGW/CE-2 LIQUIDATED DAMAGES.

THE PARTIES AGREE THAT THE APPLICABLE AMOUNT OF THE LIQUIDATED DAMAGES IS A REASONABLE ESTIMATE OF THE DAMAGES THAT THE CITY WOULD INCUR IN THE EVENT OF OBOT’S DEVELOPER’S DEFAULT ON ITS OBLIGATION TO PAY THE FUNDS REQUIRED WITH RESPECT TO THE DEVELOPER FUNDED OBOT WHARF AND RAIL IMPROVEMENTS PURSUANT TO SECTION 3.3.1.1.2 OR THE APPLICABLE DEVELOPER PARTY’S OBLIGATION TO CLOSE ESCROW AS REQUIRED UNDER ARTICLE VI. THE PAYMENT OF THE LIQUIDATED DAMAGES PROVIDED FOR HEREIN IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY PURSUANT TO

SECTION 1671 OF THE CALIFORNIA CIVIL CODE. BY PLACING ITS INITIALS BELOW, DEVELOPER SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES AGREED UPON, AND THE FACT THAT DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS:


CITY


PROLOGIS


OBOT


CCIGOG

The Parties agree that any portion of the Security Deposit that is retained by the City shall be credited to the Liquidated Damages payable pursuant to this Section 9.3, as applicable to each Phase. Further, in the event that the Phase 1 WGW Lease is terminated concurrently with a breach under this Agreement resulting in Developer's obligation to pay the WGW Liquidated Damages, Developer shall be entitled to an additional credit of FIFTY FIVE THOUSAND THREE HUNDRED TWENTY SEVEN DOLLARS AND EIGHTY CENTS (\$55,327.80) ~~THIRTY NINE THOUSAND THREE HUNDRED AND NINE DOLLARS AND TWENTY CENTS (\$39,309.20)~~ (representing the portion of the WGW Security Deposit Allocation allocated to the Railroad R/O/W and retained by the City under the Phase 1 WGW Ground Lease) against the WGW Liquidated Damages.

9.3.1 Guaranty of Liquidated Damages. Concurrent with the execution of this Agreement ~~the Third Amendment~~, ~~Developer shall cause~~ (a) Prologis shall cause Prologis, L.P. (or such other guarantor reasonably approved by the City) to execute and deliver to the City the Guaranty of Liquidated Damages applicable to the NCGW/EGW Liquidated Damages in the form attached hereto as Attachment 18-1 Schedule 1.5(a) to the Third Amendment ("NCGW/EGW Guarantee") and (b) OBOT and CCIGOG shall cause CCIG, Inc. (or such other guarantor reasonably approved by the City) to execute and deliver to the City the Guaranty of Liquidated Damages applicable to the WGW/MH-1 Liquidated Damages in the form attached hereto as Attachment 18-2 Schedule 1.5(b) to the Third Amendment ("WGW/MH-1 Guarantee").

1.6 Liquidated Damages Guarantees. To reflect the revised lease phasing, the Parties agree to revise the liquidated damages guarantees. Specifically, Attachments 18-1 and 18-2 to the Original LDDA are hereby deleted and replaced with Schedules 1.5(a) and 1.5(b) attached hereto.

1.7 Limitation on Cross Defaults. To reflect the revised lease phasing, the Parties agree to revise the cross default provisions (Section 9.10 of the Original LDDA). Specifically, Section 9.10 of the Original LDDA is hereby deleted and replaced with the following language:

“9.10 Notwithstanding any term or provision set forth in this Agreement (except Section 10.15) to the contrary:

9.10.1 West Gateway. In the event OBOT Developer defaults with respect to the obligation to (a) pay any portion of the funds required for the Developer Funded OBOT Wharf and Rail Improvements pursuant to Section 3.3.1.1.2 or (b) the obligation to Close Escrow on Ground Lease for the West Gateway under Article VI, after the application of all applicable notice and cure periods pursuant to Section 9.2, then (i) if CCIGOG has previously Closed Escrow on the MH-1 Lease Area, the City's sole remedies for such default shall be as follows: (A) ~~(x)~~ the WGW Only Liquidated Damages, (B) ~~(y)~~ if applicable, the enforcement of the City's rights under the WGW/MH-1 Guarantee up to the amount of the WGW Only Liquidated Damages, and (C) ~~(z)~~ termination of this Agreement only with respect to any City obligation to deliver the West Gateway such that the City may lease or otherwise freely dispose of the West Gateway and (ii) if CCIGOG has not previously Closed Escrow on the MH-1 Lease Area, the City's sole remedies for such default shall be as follows: (A) the WGW/MH-1 Liquidated Damages, (B) if applicable, the enforcement of the City's rights under the WGW/MH-1 Guarantee, and (C) termination of this Agreement only with respect to any City obligation to deliver the West Gateway and the MH-1 Lease Area such that the City may lease or otherwise freely dispose of the West Gateway and the MH-1 Lease Area. In the event of a termination with respect to the West Gateway or the MH-1 Lease Area, the Developer Prologis retains all rights and obligations under this Agreement with respect to the East Gateway and New Central Gateway Lease Area.

9.10.2 MH-1 Lease Area. In the event CCIGOG defaults with respect to the obligation to Close Escrow on the Ground Lease for the MH-1 Lease Area under Article VI, after the application of all applicable notice and cure periods pursuant to Section 9.2, then (a) if OBOT has previously Closed Escrow on the West Gateway, the City's sole remedies for such default shall be as follows: (i) the MH-1 Only Liquidated Damages, (ii) if applicable, the enforcement of the City's rights under the WGW/MH-1 Guarantee up to the amount of the MH-1 Only Liquidated Damages, and (iii) termination of this Agreement only with respect to any City obligation to deliver the MH-1 Lease Area such that the City may lease or otherwise freely dispose of the MH-1 Lease Area and (b) if OBOT has not previously Closed Escrow on the West Gateway, the City's sole remedies for such default shall be as follows: (i) the WGW/MH-1 Liquidated Damages, (ii) if applicable, the enforcement of the City's rights under the WGW/MH-1 Guarantee, and (iii) termination of this Agreement only with respect to any City obligation to deliver the West Gateway and the MH-1 Lease Area such that the City may lease or otherwise freely dispose of the West Gateway and the MH-1 Lease Area. In the event of a termination with respect to the West Gateway or the MH-1 Lease Area, Prologis retains all rights and obligations under this Agreement with respect to the East Gateway and New Central Gateway Lease Area.

9.10.3 East Gateway/CE-1 Lease Area. In the event the ~~Developer~~ Prologis defaults with respect to the obligation to Close Escrow on Ground Lease for the East Gateway or the CE-1 Lease Area under Article VI, after the application of all applicable notice and cure periods pursuant to Section 9.2, ~~then~~ (a) if Prologis has previously Closed Escrow on the New Central Gateway Lease Area, then the City's sole remedies for such default shall be as follows: (i) the EGW Only Liquidated Damages, (ii) as if applicable, the enforcement of the City's rights under the NCGW/EGW Guarantee up to the amount of the EGW Only Liquidated Damages, and (iii) termination of this Agreement only with respect to any City obligation to deliver the East Gateway such that the City may lease or otherwise freely dispose of the East Gateway; or (b) if ~~the Developer~~ Prologis has not previously Closed Escrow on the New Central Gateway Lease Area, then the City's sole remedies for such default shall be as follows: (i) the NCGW/EGW Liquidated Damages, and (ii) as if applicable, the enforcement of the City's rights under the NCGW/EGW Guarantee, and (iii) termination of this Agreement with respect to any City obligation to deliver the East Gateway and the New Central Gateway Lease Area such that the City may lease or otherwise freely dispose of the East Gateway and New Central Gateway Lease Area. In the event of a termination with respect to the East Gateway and/or New Central Gateway Lease Area, OBOT and CCIGOG ~~the Developer~~ retain all applicable rights and obligations under this Agreement with respect to the West Gateway and the MH-1 Lease Area. Note that East Gateway and CE-1 are addressed together because pursuant to Section 7 of the Third Amendment, Prologis must close escrow on the Ground Lease for the CE-1 Lease Area prior to closing escrow on the Ground Lease for the CE-2 Lease Area.

9.10.4 CE-2 Lease Area. In the event Prologis timely closes escrow on the Ground Lease for the CE-1 Lease Area and thereafter defaults with respect to the obligation to Close Escrow on Ground Lease for the CE-2 Lease Area under Article VI, after the application of all applicable notice and cure periods pursuant to Section 9.2, then (a) if Prologis has previously Closed Escrow on the New Central Gateway Lease Area, then the City's sole remedies for such default shall be as follows: (i) the CE-2 Only Liquidated Damages, (ii) if applicable, the enforcement of the City's rights under the NCGW/EGW Guarantee up to the amount of the CE-2 Only Liquidated Damages, and (iii) termination of this Agreement only with respect to any City obligation to deliver the CE-2 Lease Area such that the City may lease or otherwise freely dispose of the CE-2 Lease Area; or (b) if Prologis has not previously Closed Escrow on the New Central Gateway Lease Area, then the City's sole remedies for such default shall be as follows: (i) the NCGW/CE-2 Liquidated Damages, and (ii) if applicable, the enforcement of the City's rights under the NCGW/EGW Guarantee up to the amount of the NCGW/CE-2 Liquidated Damages, and (iii) termination of this Agreement with respect to any City obligation to deliver the CE-2 Lease Area and the New Central Gateway Lease Area such that the City may lease or otherwise freely dispose of the CE-2 Lease Area and New Central Gateway Lease Area. In the event of a termination with respect to the CE-2 Lease Area and/or New Central Gateway Lease Area, OBOT and CCIGOG retain all applicable

rights and obligations under this Agreement with respect to the West Gateway and the MH-1 Lease Area.

9.10.5 New Central Gateway Lease Area. In the event the ~~Developer~~ Prologis defaults with respect to the obligation to Close Escrow on Ground Lease for the New Central Gateway Lease Area under Article VI, after the application of all applicable notice and cure periods pursuant to Section 9.2: (a) if ~~the Developer~~ Prologis has previously Closed Escrow on the East Gateway, then the City's sole remedies for such default shall be as follows: (i) the NCGW Only Liquidated Damages, and (ii) as if applicable, the enforcement of the City's rights under the NCGW/EGW Guarantee up to the amount of the NCGW Only Liquidated Damages, and (iii) termination of this Agreement only with respect to any City obligation to deliver the New Central Gateway Lease Area such that the City may lease or otherwise freely dispose of the New Central Gateway Lease Area; ~~or~~ (b) if Prologis has previously Closed Escrow on the CE-1 Lease Area, but not the CE-2 Lease Area, then the City's sole remedies for such default shall be as follows: (i) the NCGW/CE-2 Only Liquidated Damages, and (ii) if applicable, the enforcement of the City's rights under the NCGW/EGW Guarantee up to the amount of the NCGW/CE-2 Liquidated Damages, and (iii) termination of this Agreement only with respect to any City obligation to deliver the New Central Gateway Lease Area and the CE-2 Lease Area such that the City may lease or otherwise freely dispose of the New Central Gateway Lease Area and the CE-2 Lease Area; or (c) if ~~the Developer~~ Prologis has not previously Closed Escrow on any portion of the East Gateway, then the City's sole remedies for such default shall be as follows: (i) the NCGW/EGW Liquidated Damages, and (ii) as if applicable, the enforcement of the City's rights under the NCGW/EGW Guarantee, and (iii) termination of this Agreement with respect to any City obligation to deliver the East Gateway and New Central Gateway Lease Area such that the City may lease or otherwise freely dispose of the East Gateway and the New Central Gateway Lease Area. In the event of a termination with respect to the East Gateway, the CE-2 Lease Area and/or New Central Gateway, OBOT and CCIGOG ~~the Developer~~ retain all applicable rights and obligations under this Agreement with respect to the West Gateway and the MH-1 Lease Area.

9.10.6 Existing Ground Leases. Consistent with Section 1.3.3, the Parties acknowledge and agree that the termination as to any portion of this Agreement with respect to any Phase pursuant to this Section 9.10 shall not affect the rights and obligations of any Party to a previously-executed Ground Lease for any other Phase.

The Parties acknowledge that the provisions of this Section 9.10 are in addition to the cross-default provisions set forth in Section 6.1.1.5 of the Original LDDA (which provides for a cross-default of OBOT's obligations under the Phase 1 WGW Lease (if applicable) and OBOT's rights under the LDDA to close escrow on the Final WGW Ground Lease) and Section 6.1.2.5 of the Original LDDA (which provides for a cross-default of Prologis' obligations under the CE-

1 Ground Lease with Prologis' rights under the LDDA to close escrow under the CE-2 Ground Lease).”

2. Leases and Contracts; Third Party Agreements.

2.1 Notch and Sliver Lease. The City has entered into an amendment to the Notch and Sliver Lease dated January 23, 2015 and the Developer Parties have previously consented to such amendment. The amendment to the Notch and Sliver lease (a) extended the term of the Port's occupancy of the subject premises through April 1, 2020 and (b) expanded the premises to include a portion of the New Central Gateway Lease Area to be subleased by the Port to Cal Freight Trucking in order to facilitate the improvement of the new Caltrans temporary construction area. The foregoing shall not constitute a waiver of Prologis's rights under the LDDA with respect to the portions of the CE-2 Lease Area and the NCGW Lease Area affected by the Notch and Sliver Lease. The City shall not further extend or otherwise amend the Notch and Sliver Lease without Prologis' prior written consent, which may be granted, withheld or conditioned in Prologis' sole and absolute discretion. The City shall use commercially reasonable efforts to cause the Port and its subtenants to vacate the Notch and Sliver Lease premises upon the expiration of the Notch and Sliver Lease.

2.2 Other Leases. During the term of the LDDA and provided there is no default by the applicable Developer, the City shall not enter into any new leases or extensions or amendments to existing leases that affect the Lease Property (or any portion thereof) without the prior written consent of the Developer Party that has the right to ground lease such portion of the Lease Property pursuant to the LDDA. If the proposed lease/extension/amendment is required to complete the Public Improvements pursuant to the Public Improvements Schedule of Performance, the applicable Developer Party shall not unreasonably withhold, condition or delay its consent. Otherwise, the applicable Developer Party may grant, withhold or condition its consent in such Developer Party's sole and absolute discretion.

2.3 Third Party Agreements; Best Efforts. The first paragraph of Section 2.2 of the Original LDDA is hereby deleted and replaced with the following language:

“The following is a summary of the agreements, approvals and permits that the Parties acknowledge are essential to the success of the Project. The Parties shall cooperate as set forth in Section 2.1 above with respect to the City's pursuit and acquisition of such discretionary approvals and agreements. For each such matter, during the time period between the execution or acquisition of the same and the termination of this Agreement: (a) the City shall use its best efforts to perform its obligations and secure the material benefit of its rights under such matter, each prior to the times set forth in the Schedule of Performance, if applicable; and (b) the City shall not seek or agree to amend the provisions of such matter without Developer's prior written consent, which may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing to the contrary, (i) Developer's prior consent shall not be required for any amendment to the Cooperation Agreement (as defined in Section 2.2.4) other than an amendment thereto which would require the City to obtain a third party's consent prior to the City agreeing to any amendment to this Agreement or the

related documents (e.g., Ground Lease(s), Billboard Agreement or the Property Management Agreement); (ii) as used herein, City's "best efforts" shall not include, or be deemed to include, any obligation on the part of the City to initiate or participate in any litigation or arbitration; and (iii) Developer shall be responsible for payment and/or reimbursement to City, due promptly upon demand by City, of all costs reasonably incurred by City to secure the material benefit of its rights under each such matter (including but not limited to the fees and costs of outside attorneys, and fees of the City Attorney based upon internal rates comparable to rates then charged by local firms of comparable size and expertise as the City Attorney's office)."

3. Prior Budget Revisions; First Amendment Section 3.3.5, Additional Funds.

3.1. Prior Budget Revisions.

3.1.1 City Contribution. The Parties hereby acknowledge that the City Contribution required by the LDDA as set forth in Section 3.3.1.1.1 of the Original LDDA was reduced from \$45,000,000 to \$37,074,986 as a result of the requirement that the City disgorge \$7,925,014 pursuant to the provisions of AB26 (as further memorialized in the City's letter to Prologis/CCIG dated April 24, 2014).

3.1.2 Mid-Project Budget Revision. Consistent with the requirements of the LDDA as set forth in Section 3.3.2.1 of the First Amendment, the City, OBOT and Prologis/CCIG have previously agreed to amend the G-Max Price Budget and the Soft Cost Budget pursuant to the terms of the City's November 4, 2014 letter to the California Capital & Investment Group, Inc. regarding the Oakland Army Base PMA Directive regarding the Mid Project Budget Revision approved and acknowledged by Prologis/CCIG, OBOT and their respective Guarantors (the "**MPBR Letter**").

3.2. Definition of Additional Funds. The definition of Additional Funds in the LDDA is amended by deleting the first paragraph of Section 3.3.2 of the First Amendment and replacing it with the following language:

~~3.3.2. A portion of the funds currently available for the Completion of the Public Improvements is hereby allocated to and shall be distributed as set forth in the following budgets: the "G Max Price Budget" (\$150,227,850) and the "Soft Cost Budget" (\$41,662,343), attached hereto as Schedules 3.3.2(a) and 3.3.2(b), respectively. These budgets are funded by the \$176,341,000 available under the Funding Agreement and \$15,549,193 from the City Contribution. Additional project funds not allocated in either of these budgets (the "Additional Funds") shall be allocated pursuant to Section 3.3.5 below. The As used in this agreement, the term "**Additional Funds**" shall mean Funds include (a) the \$25,900,000 related to the Developer Funded Wharf Improvements, (b) any portion of the City Contribution identified as actually available for future Project costs by the accounting performed pursuant to Section 3.3.2.5 below and (c) any new Project funds secured by the Parties pursuant to Section 3.3.5 below. Additional Funds~~

shall be allocated pursuant to the requirements of the LDDA as set forth in Section 3.3.5 of the First Amendment (as modified by the Third Amendment).”

3.3. Term of Obligation to Pursue Additional Funds. The Parties’ obligation to cooperate in the identification and pursuit of Additional Funds shall survive the Close of Escrow under the East Gateway Ground Lease (or, if applicable, the CE-1 Ground Lease and the CE-2 Ground Lease), West Gateway Ground Lease, the MH-1 Ground Lease and the New Central Gateway Ground Lease and continue until the earlier to occur of (a) the date that the Unfunded Improvements have been fully funded and (b) April 16, 2019, as such date may be extended pursuant to Force Majeure events, but only to the extent such an event (i) first occurs after the Effective Date and (ii) only if notice is provided within thirty (30) days of the event triggering the claim of Force Majeure.

If Additional Funds have been identified by the Parties and allocated to the City prior to the April 16, 2019 deadline but have not yet been received by the City, the City’s obligation with respect to such previously identified and allocated Additional Funds shall continue until the City has received such Additional Funds.

Notwithstanding the foregoing and Section 6.2.8.2 of the Original LDDA to the contrary, with respect to the CE-2 Lease Area and New Central Gateway Lease Area only:

(a) The City’s obligation to cooperate in the identification and pursuit of Additional Funds related to the Site Preparation Work for the applicable Ground Lease shall terminate on the Outside Closing Date for that Ground Lease.

(b) If Prologis and the City have not secured sufficient Additional Funds to permit the Completion of the Site Preparation Work for the applicable Ground Lease and Completed the same by the Outside Closing Date then Prologis and the City shall meet and confer pursuant to procedures set forth in Section 2.3.1 of the Original LDDA in an effort to agree upon modifications to the Site Preparation Work that allow the same to be Completed prior to the applicable Outside Closing Date. If Prologis and the City fail to reach an agreement pursuant to such meet and confer process, then unless Prologis elects, in its sole and absolute discretion, to provide the City with written notice that Prologis has agreed to accept responsibility, at its sole cost, to Complete the applicable Site Preparation Work, then either party may elect upon written notice to the other party to terminate the LDDA with respect to the CE-2 Lease Area or the New Central Gateway Lease Area, as applicable, on the Outside Closing Date for that Ground Lease.

3.4. Allocation of Additional Funds. The LDDA is hereby amended by revising Sections 3.3.5.1 and 3.3.5.2 of the First Amendment as follows:

“3.3.5.1 The Additional Funds shall be allocated as follows:

a. 100% shall be allocated to the Pre-Closing Off-Site Improvements until the cost of completing the Pre-Closing Off-Site Improvements has been fully funded; then

b. 100% to the completion of the following improvements, with each \$1.00 of Additional Funds applied to this Section 3.3.5.1(b) being applied equally (initially 1/3, 1/3, 1/3) to each of the designated scopes of work that have not been fully funded):

(i) the Site Preparation Work for the CE-2 Lease Area and the Site Preparation Work for the New Central Gateway Lease Area (collectively, the “Prologis Site Preparation Work”);

(ii) the City’s contingent obligation with respect to funding \$22,000,000 of Wharf Improvements pursuant to Section 5.3.4 of the Third Amendment; and

(iii) the City’s contingent obligation with respect to the funding of the WGW Additional Site Preparation Work (defined in Section 5.3.1 of the Third Amendment), the MH-1 Additional Site Preparation Work (defined in Section 6.1.1(a) of the Third Amendment), the UPRR Property Rail Improvements (defined in Section 5.2.4 of the Third Amendment), Engineers Road and the AMS site.

The City shall have the right, at its discretion, to allocate each \$1.00 of Additional Funds allocated pursuant to clause (b)(iii).

Further, the funds allocated to Prologis Site Preparation Work shall be applied first to CE-2 and then to the New Central Gateway Lease Area. The Pre-Closing Off-site Improvements, the Prologis Site Preparation Work, the WGW Waived Improvements and the MH-1 Additional Site Preparation Work are collectively referred to herein as the “Unfunded Improvements.”

~~Subject to Developer’s election under Section 3.5.1 of the LDDA, the \$25,900,000 related to the Developer Funded Wharf Improvements are allocated to the Completion of the Developer Funded Wharf Improvements.~~

~~b. The balance shall be allocated as follows:~~

~~i. Eighty percent (80%) shall be allocated:~~

~~A. first, to fund the Pre Closing Off Site Improvements, and once the same are fully funded;¹~~

~~B. —second, to fund the Additional Site Preparation Work (pro rata among the Phases: 21.1% to EGW, 33.14% to CGW and 45.76% to WGW), and once the same are fully funded;~~

~~C. —third, to fund the Wharf Improvements;~~

~~ii. —Twenty percent (20%) shall be allocated to increase the Owner's Contingency line item in the G-Max Price Budget, to be further allocated and expended pursuant to Manager's reasonable discretion in accordance with the terms of the Property Management Agreement.~~

3.3.5.2 The foregoing priority set forth in Section 3.3.5.1 shall be subject to any restrictions placed on the funds by the third party providing or regulating the same.”

3.5. Reallocation of the Reserved Funds. The \$891,500 currently reserved in the Soft Cost Budget for the construction of the Rail Improvements designated as the WGW Lead Track No. 2 that are (a) located within the Port Rail Easement and (b) not included in the Public Improvements (the “**East of Wake Rail Improvements**”) pursuant to the requirements of the LDDA as set forth in Section 3.3.2.4 of the First Amendment (the “**Reserved Funds**”) shall be reallocated as Additional Funds pursuant to the requirements of the LDDA as set forth in Section 3.3.5.1 of the First Amendment, and OBOT shall construct such East of Wake Rail Improvements as provided in Section 5.2.4(b) below.

3.6 Remediation Work. To the extent (a) CCIGOG or OBOT Closes Escrow on the MH-1 Ground Lease or the West Gateway Ground Lease, respectively, and (b) the City (i) secures third party funds that are designated for the Remediation of Hazardous Materials and (ii) such funds are not required for the Remediation associated with the City's delivery of the Public Improvements other than the WGW Waived Improvements (defined in Section 5.3.1(a) below) and MH-1 Additional Site Preparation Work or any other on-going City obligations, the City shall make such funds available to the applicable Developer Party for Remediation costs in conjunction with the construction of any said WGW Waived Improvements and MH-1 Additional Site Preparation Work (subject to any terms and conditions of such funding) pursuant to the terms of Sections 3.3, 3.4, 5.3.4 and 6.1.4 herein.

4. Outside Closing Date; Public Improvements Schedule of Performance.

4.1. Outside Closing Date. The Outside Closing Date is hereby revised as follows for each Phase (or sub area):

- a. West Gateway: April 15, 2017;
- b. CE-1 Lease Area: March 6, 2018;
- c. CE-2 Lease Area: May 24, 2018;
- d. New Central Gateway Lease Area: July 30, 2018;

e. MH-1 Lease Area: the later of (i) April 15, 2017 or (ii) the date that is ten (10) business days after the expiration or termination of the Caltrans Relocation Lease (defined below) affecting the MH-1 Lease Area.

4.2. Schedule. Consistent with the MPBR, the Public Improvements Schedule of Performance is hereby amended as set forth in Schedule 4.2, attached hereto, which schedule shall supersede all prior versions of the Public Improvements Schedule of Performance, including, without limitation, Schedule 4.1(a) of the First Amendment.

5. West Gateway Matters.

5.1 Wharf Matters.

5.1.1 Election to Construct the OBOT Wharf and Rail Improvements. OBOT hereby elects to construct the OBOT Wharf and Rail Improvements (defined below) as part of the Initial Improvements required under the West Gateway Ground Lease. Notwithstanding the provisions of Section 3.5.1 of the Original LDDA to the contrary, (a) the foregoing election is immediately effective and (b) OBOT acknowledges that items assignable pursuant to Section 3.5.1(b)(iv) of the Original LDDA are limited to the information related to the Wharf Improvements included in the 35% Bridging Documents.

5.1.2 Scopes of Work. As a result of the election set forth in Section 5.1.1 above and the waiver set forth in Section 5.3.1 below, the Parties acknowledge that the design and construction of the Wharf Improvements will be completed by OBOT under the West Gateway Ground Lease. OBOT shall require the Initial Improvements Construction Contract to include separate scopes of work for (a) the \$22,000,000 portion of the Wharf Improvements that were originally to be Completed at the City's cost (and which are the subject of the City's contingent funding obligation as set forth in the LDDA under Section 3.3.5 of the First Amendment and Section 5.3.4 below) (the "**Public Wharf Improvements**") and (b) such additional Wharf Improvements that are to be included in the \$25,900,000 OBOT Wharf and Rail Improvements (defined below) that are to be Completed at OBOT's cost (the "**Private Wharf Improvements**"). All Private Wharf Improvements shall be completed subject to the Community Benefits that apply to the private Project improvements to be constructed by the Developer Parties pursuant to Article IV of the Original LDDA; provided however, pursuant to Exhibit 37.6 to the form of West Gateway Ground Lease attached to the Original LDDA as Exhibit 3(a), the Private Wharf Improvements shall be subject to the Public Improvements Construction Jobs Policy.

5.1.3 Original LDDA Section 3.3.1.1.2, Developer Funded Wharf Improvements. Notwithstanding any term or provision of Section 3.3.1.1.2 of the Original LDDA to the contrary, OBOT's obligation to fund \$25,900,000 shall carry over to the Ground Lease, and the Parties hereby agree that (a) payments made by OBOT or its sublessee(s) for the design and construction of (i) the rail improvements located on City property (including any rail easements or other access rights granted by the Port of Oakland, UPRR or other third parties related to the Oakland Global/Gateway Development Area) that are not included in the Public Improvements (the "**Rail Improvements**") or (ii) the Wharf Improvements (excluding any

portion of (i) or (ii) funded by the City pursuant to Section 5.3.4 below) shall be credited against OBOT's obligation to fund the \$25,900,000 in Developer Funded Wharf Improvements and (b) OBOT's obligation to fund the \$25,900,000 in Developer Funded Wharf Improvements shall be deemed satisfied upon the complete satisfaction of the City's matching obligation under the TCIF Funding Agreement (regardless of the amount previously contributed by OBOT to the completion of the Wharf Improvements or Rail Improvements). To the extent OBOT opts to construct Rail Improvements under this Section to be credited against the \$25,900,000 in Developer Funded Wharf Improvements, OBOT shall provide a separate scope of work and such work shall be completed subject to the Community Benefits that apply to Public Improvements pursuant to Article IV of the LDDA (up to a total expenditure of Twenty Five Million Nine Hundred Thousand Dollars (\$25,900,000), inclusive of the cost of any Wharf Improvements included in the OBOT Funded Wharf and Rail Improvements). All other Rail Improvements shall be completed subject to the Community Benefits that apply to the private Project improvements to be constructed by the Developer Parties pursuant to Article IV of the LDDA. Further, all references in the LDDA to the term "Developer Funded Wharf Improvements" are hereby deleted and replaced with the term "**OBOT Wharf and Rail Improvements.**"

5.1.4 Accounting for OBOT Wharf and Rail Improvements. The West Gateway Ground Lease shall be amended to include OBOT's obligation to provide the City with an accounting of the costs incurred in the design and Completion of the OBOT Wharf and Rail Improvements for the City's review and approval, which accounting shall include copies of applicable contracts, invoices and checks. The City's review and approval of the accounting shall be for the sole purpose of determining that the third party costs included in the accounting were reasonable and applicable to the design and Completion of the OBOT Wharf and Rail Improvements.

5.2 Rail Matters.

5.2.1 Port Rail Easement. OBOT hereby consents to the City granting a nonexclusive rail easement (in a form reasonably acceptable to OBOT) over the portion of the Railroad R/O/W Property shown on Schedule 5.2.1 in favor of the Port, the rail operator for the Port Rail Terminal and the Class 1 Railroads (the "**Port Rail Easement**").

5.2.2 Permitted Exceptions. OBOT hereby agrees that the BNSF Rail Easement (defined below) and the Port Rail Easement shall be permitted title exceptions under the West Gateway Ground Lease.

5.2.3 City Rail Operations. As consideration for OBOT's consent granted pursuant to Section 5.2.1 above, and in order to (a) assure that there is one rail operator to provide rail services for the Port Rail Terminal and the customers located on City owned property and (b) to recapture the infrastructure costs associated with the construction of the Rail Improvements, in the event that an Affiliate of OBOT is not the rail operator for the Port Rail Terminal (either initially or at any time during the term of the West Gateway Ground Lease) the City and OBOT shall cooperate in the City's retention of the Port's rail operator for the Port Rail Terminal pursuant to an agreement (the "**City Rail Operating Agreement**") that requires the rail operator to provide rail service to customers located within the City owned property as

contemplated by the Rail Access Agreement. The parties agree that the City Operating Agreement shall include the following provisions:

(A) a requirement that the rail operator to pay fees to OBOT as consideration for the right to provide rail service to customers located on City owned property, which fees are commensurate to any fee(s) charged by the Port to the rail operator for the Port Rail Terminal (the “**City Rail Fee**”);

(B) that OBOT is an intended third party beneficiary with respect to the collection of the City Rail Fee; and

(C) a requirement that the rail operator assume liability for the payment of any liquidated damages related to limitations on rail traffic under the EBMUD MOA.

OBOT’s rights under the West Gateway Ground Lease with respect to the Railroad R/O/W Property shall be subordinate to any City Rail Operating Agreement.

The terms of any assignment of the Railroad R/O/W Property shall be subject to City consent, and OBOT and the City shall cooperate in achieving the goal of providing for one rail operator and implementing the coordinated process for replacing that operator as set forth above.

5.2.3.1 Imposition of City Rail Fee. The City Rail Fee shall not be charged during any time period when an Affiliate of OBOT is the rail operator for the Port Rail Terminal. From and after the execution of the City Rail Operating Agreement, OBOT shall use commercially reasonable efforts to collect the City Rail Fee. In support of such efforts, the City shall request copies of the reports submitted to the Port pursuant to the Port Rail Operating Agreement as permitted under the Rail Access Agreement and provide copies of the same to OBOT. OBOT shall allocate any City Rail Fee actually collected in accordance with Section 5.2.3.2 below.

5.2.3.2 Allocation and Payment of City Rail Fee. Any City Rail Fee actually collected by OBOT shall be allocated and paid pursuant to the following priority on a monthly basis:

(a) First, paid to OBOT to reimburse for the Base Rent under the West Gateway Ground Lease applicable to the Railroad R/O/W Property.

(b) Second, paid to OBOT until such time as such party has received City Rail Fees in an amount equal to the aggregate of (i) the third party costs (excluding attorney fees) incurred for the design and Completion of the Rail Improvements pursuant to Section 5.2.3.4 below, and (ii) interest on the amounts set forth in the preceding clause (i) at a simple, annual rate of three percent (3%) from the time expended until the calculation of the initial Amortization Schedule set forth below. The reimbursement of the amount set in the preceding sentence shall be amortized at a 3% interest rate over a 33 year period (commencing upon the City’s approval of the accounting pursuant to Section 5.2.3.3 below) after which time it shall be deemed fully repaid. The Parties shall enter into an amendment to the West Gateway Ground

Lease to memorialize the initial amortization schedule concurrently with the City's approval of the accounting pursuant to Section 5.2.3.3 below (the "**Amortization Schedule**"). The City and OBOT's failure to enter into such an amendment shall not affect such parties' rights and obligations under the West Gateway Ground Lease. Notwithstanding the foregoing to the contrary, if an OBOT Affiliate serves as the rail operator for the Port Rail Terminal for all or any portion of the time prior to the expiration of the 33 year period, and therefore there is no Rail Fee charged or collected during such time, any amounts that would have been due and payable pursuant to the Amortization Schedule are deemed paid. If the amount of City Rail Fees collected in any month exceeds the aggregate amount to be paid pursuant to Sections 5.2.3.2(a) and (b), the remaining amount shall be paid pursuant to Section 5.2.3.2(c). If the amount of City Rail Fees collected in any month is not sufficient to pay the aggregate amount to be paid pursuant to Sections 5.2.3.2(a) and (b), OBOT shall (1) update the Amortization Schedule to include the amount of the shortfall in the remaining principal to be amortized over the remaining time period and (2) provide the City with written notice that includes the a copy of the updated Amortization Schedule and an explanation of the update.

(c) Third, paid pari passu, fifty percent (50%) to OBOT and fifty percent (50%) to the City.

City Rail Fees collected by OBOT through the end of each calendar month shall be allocated and paid pursuant to this Section 5.2.3 by the twentieth (20th) calendar day of the following month. OBOT shall maintain a separate set of books and records related to the collection, allocation and payment of the City Rail Fees pursuant to the provisions of Section 38.18.1 of the West Gateway Ground Lease, which books and records shall be subject to the provisions of Section 38.18.2 of the West Gateway Ground Lease, except that the audit shall be annual and paid for by the City Rail Fee.

5.2.3.3. Accounting for Rail Improvements. OBOT shall provide the City with an accounting of the third party costs (excluding attorney fees) incurred by OBOT or its sublessee in the design and Completion of the Rail Improvements within ninety (90) calendar days after Completion of the same for the City's review and approval, which accounting shall include copies of contracts or purchase orders, invoices and checks. The City's review and approval of the accounting shall be for the sole purpose of determining that the third party costs included in the accounting are reasonable and applicable to the design and Completion of the Rail Improvements.

5.2.4 Rail Improvements. In the event that OBOT closes escrow on the West Gateway Ground Lease, OBOT shall be obligated to Complete, at its sole expense, the following rail improvements which are not included in the Public Improvements as part of its Minimum Project, the location of which is shown on Schedule 5.2.4 attached hereto:

(a) The portion of the WGW Lead Track No. 1 to be constructed within the BNSF Rail Easement and transferred to BNSF pursuant to the BNSF Rail Easement (the "**BNSF Rail Improvements**");

(b) The East of Wake Rail Improvements;

(c) The portion of WGW Lead Track No. 2 to be constructed on the Port property located east of the Railroad R/O/W Property and north of the Port Rail Terminal commonly referred to as the “Outer Claw” property;

(d) If the Port and/or the City enters into an Industrial Track Agreement with BNSF which permits the nonexclusive use of the BNSF Rail Improvements to provide rail service into the Port Rail terminal and to the West Gateway, MH-1 Lease Area and the New Central Gateway Lease Area which is reasonably satisfactory to the City and the Developer Parties, the portion of WGW Lead Track No. 1 to be constructed on the Port property located east of the Railroad R/O/W Property and north of the Port Rail Terminal commonly referred to as the “Outer Claw” property;

(e) The rail improvements designated as Industry Drill Track No. 1.

Further, after Completion of the same, OBOT shall not modify the rail improvements set forth in clauses (b), (c), (d) and (e) in a manner that restricts or eliminates the Port’s access to the subject rail network without the Port’s prior consent.

OBOT shall have no obligation to construct the portion of the rail improvements designated on Schedule 5.2.4 as WGW Lead Track Nos. 1 and 2 to the extent they are located on the property owned by the UPRR (the “**UPRR Property Rail Improvements**”).

OBOT acknowledges that the City has satisfied its obligation under Section 2.2.6.3 of the Original LDDA by obtaining the right to install one rail line – the WGW Lead Track No. 2.

5.3 West Gateway Waived Improvements.

5.3.1 Waiver of Conditions Precedent. Subject to Section 5.3.4 below, OBOT hereby waives the conditions precedent set forth in the LDDA as follows:

(a) Sections 6.4.9.6 (Completion of Public Improvements) and 6.4.13 (Remediation of Hazardous Materials) of the Original LDDA to the extent related to the requirement that the City (i) complete the Additional Site Preparation Work (defined in the First Amendment) located on the West Gateway (the “**WGW Additional Site Preparation Work**”), (ii) the Wharf Improvements and (iii) complete the Pre-Closing Remediation related to the same (collectively, the “**WGW Waived Improvements**”); and

(b) Sections 6.4.21 and 6.4.22 of the LDDA (as set forth in the First Amendment) to the extent related to the WGW Waived Improvements.

5.3.2 Pre-Paid Rent. As consideration for OBOT’s waiver of the conditions precedent set forth in Section 5.3.1 above, the City hereby agrees that OBOT shall be entitled to a credit in the amount of Five Hundred Thirty Nine Thousand Seven Hundred and Sixty Nine Dollars and Ninety Five Cents (\$539,769.95), which amount is the Parties’ agreed upon estimate for the Completion of the WGW Additional Site Preparation Work (the “**WGW Pre-Paid**

Rent”). The WGW Pre-Paid Rent shall be applied to the Base Rent first due under the West Gateway Ground Lease after Completion of the WGW Waived Improvements until fully applied. Notwithstanding the foregoing to the contrary, the amount of the WGW Pre-Paid Rent shall be reduced on a dollar-for-dollar basis to the extent the City secures Additional Funds and such Additional Funds are either (a) actually expended by the City in the Completion of the WGW Additional Site Preparation Work or (b) actually paid to OBOT pursuant to Section 5.3.4 below.

5.3.3 OBOT’s Completion of the WGW Additional Site Preparation Work. To the extent OBOT Completes the construction of the WGW Additional Site Preparation Work, such construction work shall be completed (a) consistent with the applicable information provided pursuant to Section 3.6 above and (b) subject to the Community Benefits that apply to Public Improvements pursuant to Article IV of the Original LDDA (up to a total expenditure of Five Hundred Thirty Nine Thousand Seven Hundred and Sixty Nine Dollars and Ninety Five Cents (\$539,769.95). All other WGW Additional Site Preparation Work shall be completed subject to the Community Benefits that apply to the private Project improvements to be constructed by the Developer Parties pursuant to Article IV of the Original LDDA.

5.3.4 City’s Continuing Obligations Related to WGW Waived Improvements. Notwithstanding the provisions of Section 6.5.3 of the Original LDDA to the contrary, the City’s continuing obligations related to the WGW Waived Improvements shall be limited to (a) the pursuit of Additional Funds pursuant to the requirements of the LDDA as set forth in Section 3.3 above and the payment of any such funds related to the WGW Waived Improvements to OBOT on a reimbursement basis up to the amount of the WGW Pre-paid Rent and (b) the application of the WGW Pre-Paid Rent.

To the extent that the City secures Additional Funds for the Completion of the WGW Waived Improvements after the Close of Escrow on the West Gateway Ground Lease:

(a) OBOT shall provide the City with an accounting of the third party costs (which costs do not include attorneys’ fees) incurred by OBOT or its sublessee in the design and Completion of the WGW Waived Improvements within ninety (90) calendar days after Completion of the same for the City’s review and approval, which accounting shall include copies of applicable contracts, invoices and checks. The City’s review and approval shall be for the sole purpose of determining that the third party costs included in the accounting are reasonable and applicable to the design and Completion of the WGW Waived Improvements.

(b) Subject to the conditions of such funding, the City shall reimburse OBOT for the costs set forth in such accounting within sixty (60) calendar days after approval of the accounting.

5.4 Remediation of Hazardous Materials. Notwithstanding the form of the West Gateway Ground Lease to the contrary, during the Term of the Ground Lease, the City shall have no obligation to Remediate any Hazardous Materials with respect to a Regulatory Reopener in any portion of the West Gateway not occupied by buildings unless the City is able to secure additional third party funds (e.g., grants or other state or federal funds (including additional tax increment)) for such Remediation. Notwithstanding the form of the WGW Ground Lease to the

contrary, as between OBOT and the City, in no event shall the City have any obligation to Remediate any Hazardous Materials with respect to Regulatory Reopeners associated with the Wharf Improvements or within the portion of the West Gateway within the area of the WGW Additional Site Preparation Work identified pursuant to Section 3.6 above during the term of the WGW Ground Lease.

5.5 Permitted Uses. The parties agree that any storage sheds or other terminal improvements constructed on the West Gateway as part of the marine terminal or railroad uses shall (i) not be counted against the allowable square footage of Trade & Logistics Uses for the balance of the Gateway/Oakland Global project, but (ii) are treated as buildings for the purpose of Regulatory Reopeners.

5.6 Payment in Lieu of Security Deposit. The parties hereby agree that OBOT shall make a one-time payment of \$166,661.31 (the “**WGW Closing Payment**”) to the City upon the Close of Escrow of the West Gateway Ground Lease in lieu of the Security Deposit otherwise required by Section 2.10 of the approved form of West Gateway Ground Lease. The \$158,360 portion of the LDDA Security Deposit allocated to the West Gateway pursuant to Section 1.1 above shall be fully credited to the WGW Closing Payment. OBOT shall deposit the balance of the WGW Closing Payment into Escrow with the other items required by Section 6.8.2.3 of the Original LDDA. From and after the Close of Escrow for the West Gateway Ground Lease, (a) the WGW Closing Payment shall be non-refundable to OBOT and (b) the City shall apply the WGW Closing Payment as Additional Funds pursuant to Section 3.4 above.

5.7 Lease Guaranties. The form of the Minimum Project Liquidated Damages Guaranty and Completion Guaranty required under the West Gateway Ground Lease shall be amended to provide the City with the right to request an annual confirmation between January 15th and February 15th of each calendar year showing reasonable and customary written evidence from one or more bona fide financial institutions that the guarantor(s) have maintained the WGW Guarantor Approved Cash Level during the period that the applicable guaranty is in effect.

5.8 West Gateway Ground Lease. The City and OBOT shall make the modifications to the West Gateway Ground Lease to incorporate the applicable provisions of this Third Amendment, including, without limitation, the provisions of this Section 5 and Section 9 below prior to the execution of the West Gateway Ground Lease.

6. MH-1 Lease Area Matters.

6.1 MH-1 Additional Site Preparation Work.

6.1.1 Waiver of Conditions Precedent. Subject to the provisions of Section 6.4.4 below, CCIGOG hereby waives the conditions precedent set forth in the LDDA as follows:

(a) Sections 6.4.9.6 (Completion of Public Improvements) and 6.4.13 (Remediation of Hazardous Materials) of the Original LDDA to the extent related to the requirement that the City (i) complete the Additional Site Preparation Work located on the MH-1

Lease Area and (ii) complete the Pre-Closing Remediation related to the MH-1 Additional Site Preparation Work (collectively, the “**MH-1 Additional Site Preparation Work**”); and

(b) Section 6.4.21 of the LDDA (as set forth in the First Amendment) to the extent related to the MH-1 Additional Site Preparation Work.

6.1.2 Pre-Paid Rent. As consideration for CCIGOG’s waiver of the conditions precedent set forth in Section 6.1.1 above, the City hereby agrees that CCIGOG shall be entitled to a credit in the amount of Four Million Three Hundred and Twenty Thousand Two Hundred and Thirty Dollars and Five Cents (\$4,320,230.05), which amount constitutes the Parties agreed upon estimate for the Completion of the MH-1 Additional Site Preparation Work (the “**MH-1 Pre-Paid Rent**”). The MH-1 Pre-Paid Rent shall be applied to the Base Rent first due after Completion of the MH-1 Additional Site Preparation Work under the Ground Lease for the MH-1 Lease Area (the “**MH-1 Ground Lease**”) until fully applied. Notwithstanding the foregoing to the contrary, the amount of the MH-1 Pre-Paid Rent shall be reduced on a dollar-for-dollar basis to the extent the City secures Additional Funds and such Additional Funds are either (a) actually expended by the City in the completion of the MH-1 Additional Site Preparation Work or (b) actually paid to CCIGOG pursuant to Section 6.1.4 below.

6.1.3 Completion of the Additional Site Preparation Work. To the extent CCIGOG Completes the construction of the MH-1 Additional Site Preparation Work, such construction work shall be (a) consistent with the applicable information provided pursuant to Section 3.6 above and (b) completed subject to the Community Benefits that apply to Public Improvements pursuant to Article IV of the Original LDDA (up to a total expenditure of Four Million Three Hundred and Twenty Thousand Two Hundred and Thirty Dollars and Five Cents (\$4,320,230.05). All other MH-1 Additional Site Preparation Work shall be completed subject to the Community Benefits that apply to the private Project improvements to be constructed by the Developer Parties pursuant to Article IV of the Original LDDA.

6.1.4 City’s Continuing Obligations Related to Additional Site Preparation Work. Notwithstanding the provisions of Section 6.5.3 of the Original LDDA to the contrary, from and after the Close of Escrow on the MH-1 Ground Lease, the City’s continuing obligations related to the MH-1 Additional Site Preparation Work shall be limited to (a) the pursuit of Additional Funds pursuant to the requirements of the LDDA as set forth in Section 3.3 above and the payment of any such funds related to the MH-1 Additional Site Preparation Work to CCIGOG on a reimbursement basis up to the amount of the MH-1 Pre-Paid Rent and (b) the application of the MH-1 Pre-Paid Rent.

To the extent that the City secures Additional Funds for the Completion of the MH-1 Additional Site Preparation Work after the Close of Escrow on the MH-1 Ground Lease:

(a) OBOT shall provide the City with an accounting of the third party costs incurred by CCIGOG or its sublessee in the design and Completion of the MH-1 Additional Site Preparation Work within ninety (90) calendar days after Completion of the same for the City’s review and approval, which accounting shall include copies of applicable contracts, invoices and checks. The City’s review and approval of the accounting shall be for the

sole purpose of determining that the third party costs included in the accounting are reasonable and applicable to the design and Completion of the MH-1 Additional Site Preparation Work.

(b) Subject to the terms and conditions of such funding, the City shall reimburse CCIGOG for the costs set forth in such accounting within sixty (60) calendar days after approval of the accounting.

6.2 MH-1 Ground Lease Provisions.

6.2.1 Premises. The premises under the MH-1 Ground Lease shall be the MH-1 Lease Area.

6.2.2 Maximum Square Footage/Development Transfer. The square footage of Permitted Uses under the MH-1 Ground Lease shall be 188,554 square feet; provided however, Prologis and CCIGOG shall have the right to assign/transfer unused Trade and Logistics square footage among the East Gateway Ground Lease (including the CE-1 Ground Lease and CE-2 Ground Lease), New Central Gateway Ground Lease and MH-1 Ground Lease, subject to otherwise applicable City land use regulations.

6.2.3 Minimum Project. The square footage for the Minimum Project under the MH-1 Ground Lease shall be inserted into the applicable form of Ground Lease as follows:

- a. Ground Lease Section 6.1.1.1: 50,916 square feet;
- b. Ground Lease Section 6.1.1.2: 93,346 square feet;
- c. Ground Lease Section 6.1.1.3: 118,804 square feet; and
- d. Ground Lease Section 6.1.1.4: 160,000 square feet.

If, and only if, Close of Escrow has occurred under the West Gateway Ground Lease and the MH-1 Ground Lease by June 15, 2016, then pursuant to the Three Party Agreement Regarding Temporary Construction Staging, dated April 17, 2015, for Trade and Logistics Uses, prior to submitting the scope of the Surrender Work as defined and required under Section 4.3.2 of that agreement, CCIGOG shall have the right, upon written notice to the City, to elect to keep the structures and use all or a portion of the approximately 61,000 square feet of portable office and warehouse improvements installed by CCIGOG as a credit towards its Minimum Project obligations under the MH-1 Ground Lease. Further, the time periods applicable to the thresholds set forth above shall commence upon the later to occur of (a) the Effective Date of the MH-1 Ground Lease or (b) the date that Caltrans vacates the MH-1 Lease areas pursuant to the terms of the applicable sublease between CCIGOG and Caltrans.

6.2.4 Liquidated Damages. The Minimum Project Liquidated Damages under the MH-1 Ground Lease shall be Six Hundred Eighty Thousand One Hundred and Three Dollars and Sixteen Cents (\$680,103.16).

6.2.5 Title Matters.

(a) Title Exceptions. The Permitted Title Exceptions under the MH-1 Ground Lease shall be the Approved Exceptions applicable to the Central Gateway which actually affect the MH-1 Lease Area, plus any additional Permitted Title Exceptions permitted or required pursuant to Section 6.9 of the Original LDDA.

(b) BNSF Rail Easement. CCIGOG hereby agrees that the BNSF Rail Easement shall be a permitted title exception under the MH-1 Ground Lease.

(c) NCGW Rail Easement. CCIGOG hereby consents to the City's grant, upon receipt of a written request from the lessee under the New Central Gateway Ground Lease, of a non-exclusive rail easement to such party in a form and location reasonably acceptable to CCIGOG.

6.3 Additional Permitted Uses for the MH-1 Lease Area. The Trade & Logistics Uses located on the MH-1 Lease Area shall include an administrative office for rail operations conducted at the Gateway/Oakland Global project and a "RIP/Loco" rail maintenance facility.

6.4 Effect of Caltrans Temporary Construction Area. The City and CCIGOG acknowledge that the City, CCIGOG and Caltrans have entered into various agreements to facilitate Caltrans temporary construction area for Caltrans Bay Bridge seismic retrofit project which affect a portion of the MH-1 Lease Area (the "**Caltrans Agreements**"). Therefore, the City and CCIGOG agree that CCIGOG may Close Escrow on the MH-1 Ground Lease prior to the expiration of the Caltrans Agreements, however, the tenant obligations related to the portion of the MH-1 Lease Area affected by the Caltrans Agreements (Rent, insurance, indemnity, maintenance, Minimum Project, etc.) shall be abated during the term of the Caltrans Agreements.

6.5 Remediation of Hazardous Materials. Notwithstanding the form of the MH-1 Ground Lease to the contrary, as between CCIGOG and the City, in no event shall the City shall have any obligation to Remediate any Hazardous Materials with respect to a Regulatory Reopener in the portions of the MH-1 Lease Area not covered by buildings unless the City is able to secure additional third party funds (e.g., grants or other state or federal funds) for such Remediation.

6.6 MH-1 Ground Lease Guarantor. CCIGOG shall provide to the City, at least sixty (60) days prior to the Closing Date for the MH-1 Ground Lease, a written request ("**MH-1 Guarantor Request**") for approval of one or more entity(ies) identified therein, that may include but are not necessarily limited to California Capital & Investment Group, Inc., that CCIGOG proposes to provide the Minimum Project Liquidated Damages Guaranty and Completion Guaranty(ies) under such Ground Lease (the "**MH-1 Proposed Guarantor**"). The MH-1 Guarantor Request also shall (a) identify the MH-1 Proposed Guarantor, (b) shall confirm such entity is registered and qualified to transact business in California, and (c) include reasonable and customary written evidence from one or more bona fide financial institutions, substantiating that the MH-1 Proposed Guarantor has on hand at least NINE MILLION DOLLARS (\$9,000,000) in cash or cash equivalent assets (the "**MH-1 Guarantor Approved Cash Level**"). If the MH-1

Proposed Guarantor is California Capital & Investment Group, Inc., the City's approval shall be limited to confirming that California Capital & Investment Group, Inc. meets the MH-1 Guarantor Approved Cash Level, and the City shall not unreasonably withhold, delay or condition its approval of the MH-1 Guarantor Approved Cash Level. In all other cases, the City shall not unreasonably withhold, delay or condition its approval of any MH-1 Proposed Guarantor that (x) is registered and qualified to transact business in California and (y) meets the MH-1 Guarantor Approved Cash Level. The City shall provide Developer with written notice of the City's approval or disapproval of the MH-1 Proposed Guarantor(s) within fifteen (15) calendar days after receipt of the MH-1 Guarantor Request. Any disapproval by the City shall state with specificity the basis for such disapproval. In the event of a disapproval, Developer shall have the right to submit a supplement to the MH-1 Guarantor Request, or a new MH-1 Guarantor Request, responding to the City's basis for disapproval. The form of the Minimum Project Liquidated Damages Guaranty and Completion Guaranty required under the MH-1 Ground Lease shall be amended to provide the City with the right to request an annual confirmation between January 15th and February 15th of each calendar year showing reasonable and customary written evidence from one or more bona fide financial institutions that the guarantor(s) have maintained the MH-1 Guarantor Approved Cash Level during the period that the applicable guaranty is in effect.

6.7 Payment in Lieu of Security Deposit. The parties hereby agree that CCIGOG shall make a one-time payment of \$50,945.28 (the "**MH-1 Closing Payment**") to the City upon the Close of Escrow of the MH-1 Gateway Ground Lease in lieu of the Security Deposit otherwise required by Section 2.9 of the approved form of MH-1 Gateway Ground Lease. The \$68,330 portion of the LDDA Security Deposit allocated to the MH-1 Lease Area pursuant to Section 1.1 above shall be fully credited to the MH-1 Closing Payment and the remaining balance of the allocated portion of the LDDA Security Deposit shall be retained by the City and credited against the Base Rent due under the MH-1 Ground Lease. From and after the Close of Escrow for the MH-1 Ground Lease, (a) the MH-1 Closing Payment shall be non-refundable to CCIGOG and (b) the City shall apply the MH-1 Closing Payment as Additional Funds pursuant to Section 3.4 above.

6.8 Form of Ground Lease. The form of the MH-1 Ground Lease, including rent, shall be the form of the East Gateway/Central Gateway Ground Lease attached to the LDDA, modified by the City and CCIGOG prior to the execution of the MH-1 Ground Lease to incorporate the applicable provisions of this Third Amendment, including without limitation, Sections 1, 6 and 9 below.

7. East Gateway Matters.

7.1 CE-1 Additional Site Preparation Work. The City and Prologis hereby agree that the scope of the Additional Site Preparation Work for the CE-1 Lease Area shall be as set forth in Schedule 7.1 attached hereto.

7.2 CE-1 Ground Lease Provisions.

7.2.1 Premises. The premises under the CE-1 Ground Lease shall be the CE-1 Lease Area.

7.2.2 Maximum Square Footage/Development Transfer. The square footage of Permitted Uses under the CE-1 Ground Lease shall be 256,212 square feet; provided however, Prologis or Prologis and CCIGOG, as applicable, shall have the right to assign/transfer unused Trade and Logistics square footage among the East Gateway Ground Lease (including CE-1 Ground Lease and CE-2 Ground Lease), New Central Gateway Ground Lease and MH-1 Ground Lease, subject to otherwise applicable City land use regulations.

7.2.3 Minimum Project. The square footage of the Minimum Project under the CE-1 Ground Lease shall be inserted into the applicable form of Ground Lease as follows:

- a. Ground Lease Section 6.1.1.1: 60,063 square feet;
- b. Ground Lease Section 6.1.1.2: 98,928 square feet;
- c. Ground Lease Section 6.1.1.3: 128,960 square feet; and
- d. Ground Lease Section 6.1.1.4: 176,658 square feet.

7.2.4 Security Deposit. The Security Deposit under the CE-1 Lease shall be Fifty Six Thousand Two Hundred and Forty Five Dollars and Nineteen Cents (\$56,245.19).

7.2.5 Liquidated Damages. The Minimum Project Liquidated Damages under the CE-1 Lease shall be Seven Hundred and Forty Six Thousand Two Hundred and Forty Seven Dollars and Eighty Eight Cents (\$746,247.88).

7.2.6 Title Matters.

(a) Title Exceptions. The Permitted Title Exceptions under the CE-1 Lease shall be the Approved Exceptions applicable to the East Gateway which actually affect the CE-1 Lease Area, plus any additional Permitted Title Exceptions permitted or required pursuant to Section 6.9 of the Original LDDA.

(b) BNSF Rail Easement. Prologis hereby agrees that the BNSF Rail Easement shall be a permitted title exception under the CE-1 Ground Lease.

7.3 CE-2 Ground Lease Provisions.

7.3.1 Premises. The premises under the CE-2 Ground Lease shall be the CE-2 Lease Area. Prologis hereby exercises its option under the LDDA (Section 5 of the First Amendment) to include the portion of the CE-2 Lease Area affected by the Notch and Sliver Lease if such lease is still in effect as of the close of escrow under the East Gateway Ground Lease or CE-2 Ground Lease, as applicable.

7.3.2 Maximum Square Footage/Development Transfer. The square footage of Permitted Uses under the CE-2 Ground Lease shall be 231,660 square feet; provided however, Prologis or Prologis and CCIGOG, as applicable, shall have the right to assign/transfer unused Trade and Logistics square footage among the East Gateway Ground Lease (including the CE-1 Ground Lease and CE-2 Ground Lease), New Central Gateway Ground Lease and MH-1 Ground Lease, subject to otherwise applicable City land use regulations.

7.3.3 Minimum Project. The square footage of the Minimum Project under the CE-2 Ground Lease shall be inserted into the applicable form of Ground Lease as follows:

- a. Ground Lease Section 6.1.1.1: 52,127 square feet;
- b. Ground Lease Section 6.1.1.2: 85,856 square feet;
- c. Ground Lease Section 6.1.1.3: 111,920 square feet; and
- d. Ground Lease Section 6.1.1.4: 153,315 square feet.

7.3.4 Security Deposit. The Security Deposit under the CE-2 Lease shall be Fifty Thousand Two Hundred and Eight Dollars and Ninety Five Cents (\$50,208.95).

7.3.5 Liquidated Damages. The Liquidated Damages under the CE-2 Lease shall be Six Hundred and Sixty Six Thousand One Hundred and Sixty Dollars and Forty Eight Cents (\$666,160.48).

7.3.6 Notch Matters. If the applicable Parties have not elected to terminate the LDDA pursuant to Section 3.3 and close of escrow for the CE-2 Ground Lease occurs prior to the expiration of the Notch and Sliver Ground Lease:

(a) Pursuant to the requirements of the LDDA as set forth in Section 5 of the First Amendment, (i) Prologis' obligations under the CE-2 Ground Lease for the portion of the CE-2 Lease Area impacted by the Notch & Sliver Lease premises (including, but not limited to, rent, maintenance and insurance obligations) shall be abated until the date the Port and its subtenants have vacated such property and (ii) Prologis' obligations under the CE-2 Ground Lease to pay rent applicable to the portion of the CE-2 Lease Area impacted by the Notch & Sliver Lease premises shall continue to be abated until the City has Completed all Public Improvements applicable to such property pursuant to Section 7.3.6(b) below; and

(b) Subject to the City's receipt of sufficient Additional Funds, the City shall complete the following Public Improvements related to the portion of the CE-2 Lease Area impacted by the Notch and Sliver Lease premises as soon as is practicable after the Port's vacation of the same: demolition of any improvements affecting such property and completing the rough grading and retaining wall improvements necessary to bring such property to finished grade, which rough grading shall not include the construction of any building pads (note it is the understanding of the Parties that the City will be entitled to a partial reimbursement under the City-Port Cost Sharing Agreement for demolition of improvements located on the Port property).

7.3.7 Title Matters.

(a) Title Exceptions. The Permitted Title Exceptions under the CE-2 Lease shall be the Approved Exceptions applicable to the East Gateway which actually affect the CE-2 Lease Area, plus any additional Permitted Title Exceptions permitted or required pursuant to Section 6.9 of the Original LDDA.

(b) BNSF Rail Easement. Prologis hereby agrees that the BNSF Rail Easement shall be a permitted title exception under the CE-2 Ground Lease.

(c) East Gateway Spur Rail Easement. Prologis hereby consents to the City granting a nonexclusive rail easement (in a form reasonably acceptable to Prologis) over the portion of the CE-2 Lease Area shown on Schedule 7.3.7(c) in favor of the Port, the rail operator for the Port Rail Terminal and the Class 1 Railroads (the “**East Gateway Spur Rail Easement**”).

7.4 Realignment of Rail Improvements. Prologis may request a realignment of rail improvements serving the East Gateway (including rail crossings and rail spurs) (as compared to the 65% Bridging Documents), so long as such realignment (a) does not delay the Close of Escrow on the East Gateway Lease (or, if applicable, the CE-1 Ground Lease or the CE-2 Ground Lease), the City’s Completion of the Public Improvements, or OBOT’s completion of its minimum project for the West Gateway and (b) Prologis performs the realignment at its sole cost. The City, at no third party cost and subject to compliance with its CEQA obligations, shall assist Prologis in securing any governmental or third party approvals/consents necessary for such realignment.

7.5 Contingent Obligation to Reimburse For Wicking Costs. As originally agreed to pursuant to the MPBR Letter, (a) Prologis hereby agrees to reimburse the City for any third party costs associated with wicking work that are ultimately located outside of the final boundaries of the Additional Site Preparation Work for the CE-2 lease Area and (b) if Prologis breaches its obligation to close escrow on the Ground Lease for the East Gateway, CE-1 Lease Area or CE-2 Lease Area (as applicable), in addition to any Liquidated Damages that may be due and payable for such breach, Prologis hereby agrees to reimburse the City for all wicking costs related to the CE-2 Lease Area.

7.6 Form of Ground Leases. The City and Prologis shall make the modifications to the East Gateway Ground Lease to incorporate the applicable provisions of this Third Amendment, including, without limitation, the provisions of this Section 7 and Section 9 below prior to the execution of the East Gateway Ground Lease. If Prologis exercises its right to enter into the CE-1 Ground Lease and the CE-2 Ground Lease, the form of such Ground Leases shall be the form of the East Gateway Ground attached to the LDDA, modified by the City and Prologis prior to the execution of the such Ground Leases to incorporate the applicable provisions of this Third Amendment, including without limitation, Sections 1, 7 and 9 below.

8. New Central Gateway Matters.

8.1 New Central Gateway Ground Lease Provisions.

8.1.1 Premises. The premises under the New Central Gateway Lease shall be the New Central Gateway Lease Area. Prologis hereby exercises its option under the LDDA (Section 5 of the First Amendment) to include the portion of the New Central Gateway Lease Area affected by the Notch and Sliver Lease if such lease is still in effect as of the close of escrow under the New Central Gateway Ground Lease.

8.1.2 Maximum Square Footage/Development Transfer. The square footage of Permitted Uses under the New Central Gateway Ground Lease shall be 289,112 square feet; provided however, Prologis or Prologis and CCIGOG, as applicable, shall have the right to assign/transfer unused Trade and Logistics square footage among the East Gateway Ground Lease, CE-1 Ground Lease, CE-2 Ground Lease, New Central Gateway Ground Lease and MH-1 Ground Lease, subject to otherwise applicable City land use regulations.

8.1.3 Minimum Project. The square footage for the Minimum Project under the New Central Gateway Ground Lease shall be inserted into the applicable form of Ground Lease as follows:

- a. Ground Lease Section 6.1.1.1: 85,993 square feet;
- b. Ground Lease Section 6.1.1.2: 141,636 square feet;
- c. Ground Lease Section 6.1.1.3: 184,633 square feet; and
- d. Ground Lease Section 6.1.1.4: 252,922 square feet.

8.1.4 Security Deposit. The Security Deposit under the New Central Gateway Ground Lease shall be Ninety Seven Thousand Three Hundred and Twelve Dollars and Fifty Six Cents (\$97,312.56).

8.1.5 Liquidated Damages. The Minimum Project Liquidated Damages under the New Central Gateway Ground Lease shall be One Million Two Hundred Ninety Nine Thousand One Hundred Eighty Three Dollars and Thirty Seven Cents (\$1,299,183.37).

8.1.6 Sliver Matters. If the applicable Parties have not elected to terminate the LDDA pursuant to Section 3.3 and close of escrow for the New Central Gateway Ground Lease occurs prior to the expiration of the Notch and Sliver Ground Lease:

(a) Pursuant to the requirements of the LDDA as set forth in Section 5 of the First Amendment, (i) Prologis' obligations under the New Central Gateway Ground Lease for the portion of the New Central Gateway Lease Area impacted by the Notch & Sliver Lease premises (including, but not limited to, rent, maintenance and insurance obligations) shall be abated until the date the Port and its subtenants have vacated such property and (ii) Prologis' obligations under the New Central Gateway Ground Lease to pay rent applicable to the portion of the New Central Gateway Lease Area impacted by the Notch & Sliver Lease premises shall

continue to be abated until the City has Completed all Public Improvements applicable to such property pursuant to Section 8.1.6(b) below; and

(b) Subject to the City's receipt of sufficient Additional Funds, the City shall complete the following Public Improvements related to the portion of the New Central Gateway Lease Area impacted by the Notch and Sliver Lease premises as soon as is practicable after the Port's vacation of the same: demolition of any improvements affecting such property and completing the rough grading, which rough grading shall not include the construction of any building pads (note that it is the understanding of the Parties that the City will be entitled to a partial reimbursement under the City-Port Cost Sharing Agreement for demolition of improvements located on the Port property).

8.1.7 Title Matters.

(a) Permitted Exceptions. The Permitted Title Exceptions under the New Central Gateway Ground Lease shall be the Approved Exceptions applicable to the Central Gateway which actually affect the New Central Gateway Lease Area, plus any additional Permitted Title Exceptions permitted or required pursuant to Section 6.9 of the Original LDDA.

(b) BNSF Rail Easement. Prologis hereby agrees that the BNSF Rail Easement shall be a permitted title exception under the New Central Gateway Ground Lease.

8.2 Form of New Central Gateway Ground Lease. The form of the New Central Gateway Ground Lease shall be the form of the East Gateway/Central Gateway Ground Lease attached to the LDDA, modified by the City and Prologis prior to the execution of the New Central Gateway Ground Lease to incorporate the applicable provisions of this Third Amendment, including without limitation, Sections 1, 8 and 9 below.

9. Additional Modifications to Ground Lease Forms. Prior to the Close of Escrow for a particular lease area, the applicable Parties shall amend the applicable Ground Lease form to provide as follows:

9.1 Placement of Excavated Soil. Each Developer Party shall have the right to relocate and place soil excavated from the applicable Premises to the New Central Gateway Lease Area (defined below) provided that:

(a) such soil is (i) permitted to remain at the Oakland Army Base under the RAP/RMP, (ii) consistent with the geotechnical requirements of the approved plans for the Additional Site Preparation Work located on the New Central Gateway Lease Area (or otherwise approved by Prologis in its reasonable discretion) and (iii) necessary to Complete the Public Improvements to be located on the New Central Gateway Lease Area; and

(b) such party provides the City's Remediation Manager with fifteen (15) business days' prior notice of such relocation (copied to the New Central Gateway Lease Developer Party), which notice shall include (i) an estimate of the total cubic yardage of soil to be relocated, (ii) a general description of the location of the source of the soil, and (iii) copies of

environmental and geotechnical testing performed on the soil showing it meets the RAP/RMP and geotechnical criteria.

The City shall have the right, but not the obligation, to conduct further analysis of the subject soil within such fifteen (15) business day period. If the results of such analysis reasonably determine that all or a portion of the applicable soil does not meet the requirements of Section 9.1(a) above, the City shall notify the applicable Developer Party in writing, the Developer Party submitting the notice shall reimburse the City for such testing costs, and the City shall have the right to reject such soil. The City shall also have the right to reject such soil within the fifteen (15) business day period if it is not needed for the completion of the Public Improvements on the New Central Gateway Lease Area.

The Developer Parties' rights under this Section 9.1 shall terminate on the earlier to occur of (y) the Close of Escrow for the New Central Gateway Ground Lease or (z) the City's written notice to the Developer Parties (i) that such activity would interfere with the City's completion of the Public Improvements or (ii) such soil is not required for completion of the Public Improvements on the New Central Gateway Lease Area.

9.2 Use of Groundwater Treatment System. Each Developer Party shall have the right to dispose ground water generated by the development of the applicable lease area into the City's existing groundwater treatment facility, located in the southern portion of the New Central Gateway Lease Area to use such system for the disposal of groundwater from the applicable Premises in return for an initial charge of \$0.03/gallon, which initial charge shall be subject to a final "true-up" pursuant to Section 9.2.1 and 9.2.2 below. The Developer Parties' rights to use the applicable facility under this Section 9.2 shall terminate upon the City's election, in its sole and absolute discretion, to terminate the use of the groundwater treatment facility at any time; however, the Developer Parties shall have the right to continue the operation of the groundwater treatment facility upon assumption of all applicable third party agreements so long as such operation does not delay the City's construction of the Public Improvements, or otherwise interfere with the City's obligations or plans. Funds received for this use of the groundwater system shall be kept in a separate project account and shall not be used by the City until after the final "true-up" is complete, at which point, the City may, but is not obligated, to spend such funds on any outstanding Public Improvements obligations.

9.2.1 True Up of Costs. The City and the applicable Developer Party shall perform an accounting of the applicable Developer Party's pro rata share of the City's actual costs to operate the ground water treatment facility within ninety (90) calendar days after the earlier to occur of (a) the date the City terminates its use of the groundwater treatment facility or (b) the date the Developer Party terminates its use of the ground water treatment facility. The City shall provide the Developer Party with an accounting of (x) the costs to operate the groundwater treatment facility (including, without limitation, utility fees, EBMUD charges and material costs, and the accounting costs, which include the City's costs and fees attributable to managing and tracking this), which accounting shall include copies of contracts or purchase orders, invoices and checks, (y) the meter readings showing the total gallons of groundwater disposed of by the groundwater treatment facility and (z) the meter readings showing the total gallons of groundwater disposed by the Developer Party into the ground water treatment facility.

The Developer Party's pro rata share of the City's actual costs to operate the ground water treatment facility by the following calculation (using the (x), (y) and (z) from the immediately preceding sentence): [(x) multiplied by ((z) divided by (y))].

9.2.2. True Up Payment. If the applicable Developer Party's pro rata share of the actual costs exceeds the amount paid by such Developer Party pursuant to the initial charges, the Developer Party shall pay the difference to the City within thirty (30) calendar days after the accounting provided in Section 9.2.1 is completed. If the amount paid by the applicable Developer Party pursuant to the initial charges exceeds such Developer Party's pro rata share of the actual costs, the City shall pay the difference to the Developer Party within thirty (30) calendar days after the accounting provided in Section 9.2.1 is completed.

9.3 Additional Site Preparation Work – Maximum Development. The Parties hereby agree that (a) the City shall not be required to complete Additional Site Preparation Work on the East Gateway, MH-1 Lease Area and New Central Gateway in excess of the required FAR Plus 20 for the maximum amount of Trade & Logistics Uses for such areas (942,770 square feet) and (b) if the Developer Parties exercise their right to relocate Trade & Logistic Uses from one Phase to another after the Additional Site Preparation Work has begun on either the transferring or receiving Phase, the Developer Party receiving the additional Trade & Logistics Uses square footage shall be required to Complete, at its sole expense, any required site preparation work for transferring square footage.

9.4 BCDC Requirements. Each Developer shall be responsible for obtaining its own regulatory permits (including, without limitation, any required BCDC Permit) for the improvements to be constructed by such Developer Party pursuant to its respective Ground Lease (including, without limitation, if applicable, any WGW or MH-1 Waived Improvements (collectively, the "**Developer Improvements**"). If BCDC or any other governmental/regulatory agency requires the construction of open space improvements as a condition to the issuance of a permit required for a Developer Party's applicable Developer Improvements, and provided that such improvements are permitted by the Tidelands Trust, the City shall grant such Developer Party a right of entry (in a form reasonably acceptable to both Parties) to construct such open space improvements in the City-owned open space located west of the West Gateway. The Parties shall take such steps as are necessary to cause the Special District to fund the maintenance of such open space improvements. Until such time as the Special District has annexed these areas, any maintenance and/or services required for such open space improvements shall be paid annually in advance to the City by the applicable Developer Party.

9.5 Rail Matters.

9.5.1 BNSF Easement. The Developer Parties hereby consent to the City's grant of the exclusive rail easement to BNSF pursuant to the documents recorded in the Official Records on May 27, 2015, as Document No. 2015140407 (the "**BNSF Rail Easement**").

9.5.2 Rail Access Agreement Rights. In addition to the access rights to the Port Rail Terminal, the rights to be granted to the ground lessees pursuant to the Ground Leases shall include any rail easement rights granted by the Port to the City under the Rail Access Agreement

(referred to as the “Rail Service Agreement” under the current forms of Ground Leases). Further, to the extent the ground lessees exercise the rights under the Rail Access Agreement, the term “Indemnified Parties” (as defined in the form of Ground Lease) and the indemnification obligation under the Ground Leases shall include the Port.

9.6 Post-Closing Matters Related to Additional Funds. If the Parties are able to identify and secure Additional Funds for the design and construction of an Unfunded Improvement within the time period set forth in Section 3.3 above, then the Parties shall meet and confer whether the City or the Developer shall take the lead for Completion of the subject Unfunded Improvement. If the City is to take the lead, the City shall apply the Additional Funds towards the Completion of the subject Unfunded Improvement pursuant to the provisions of the LDDA that are applicable to the Completion of Public Improvements. If the applicable Developer Party is to take the lead, the Additional Funds shall be made available to the applicable Developer Party on a reimbursement basis pursuant to (and conditioned upon) the following:

(a) The subject Unfunded Improvement shall be Completed subject to the Community Benefits that apply to Public Improvements pursuant to Article IV of the Original LDDA (up to a total expenditure of the available Additional Funds).

(b) The approved Final Construction Documents required pursuant to Article 6 of the applicable Ground Lease shall include the following: (i) a detailed, segregated scope of work for the subject Unfunded Improvement, (ii) a segregated cost for the subject Unfunded Improvement (which cost shall be subject to the applicable change order provisions of the Initial Improvement Construction Contract) and (iii) with respect to the WGW or MH-1 Additional Site Preparation Work, an exhibit showing the location of such improvements.

(c) The applicable Developer Party shall provide the following to the City within ninety (90) calendar days after Completion of the subject Unfunded Improvement for the City’s review and approval: (i) an accounting of the third party costs (excluding attorneys’ fees) incurred by such Developer Party or its sublessee in the design and Completion of the subject Unfunded Improvement, which accounting shall include copies of applicable contracts, invoices and checks and (ii) reasonable evidence that the applicable Developer Party has complied with the requirement set forth in clause (a) above. The City’s review and approval of the accounting shall be for the sole purpose of determining that the third party costs included in the accounting are reasonable and applicable to the design and Completion of the subject Unfunded Improvement.

(d) Subject to the terms and conditions of such funding, the City shall reimburse the applicable Developer Party, as applicable, for the costs set forth in such accounting within sixty (60) calendar days after approval of the accounting.

If the applicable Developer Party has already commenced construction of the subject Unfunded Improvement and has not previously complied with the requirements of Section 9.6(a) or (b) with respect to the prior work, the costs related to the prior work shall be ineligible for reimbursement from the Additional Funds, but the costs related to the remainder of the work

shall be eligible for reimbursement provided that the applicable Developer Party complies with the requirements of this Section 9.6 with respect to such remaining work.

Further, the applicable Developer Party shall have the right, in its sole and absolute discretion and upon delivery of written notice to the City, to forego its right to reimbursement from the Additional Funds. In such an event, the applicable Unfunded Improvement shall be completed subject to the Community Benefits that apply to the private Project improvements to be constructed by the Developer Parties pursuant to Article IV of the Original LDDA.

10. Amendment to PMA. The Parties hereby authorize an amendment to the Property Management Agreement to provide for (a) CCIG, Inc.'s use of commercially reasonable efforts to secure Additional Funds for the Project and (b) the City's payment of a lump sum fee of \$50,000 to CCIG, Inc. to be funded from the Project contingency set forth in the Soft Cost Budget as compensation CCIG, Inc.'s time, efforts and costs (commencing on December 16, 2014) incurred in pursuing Additional Funds for the Project. The Parties further agree to amend the Property Management Agreement to (y) clarify that the term "Design-Build Contract costs" as used in Section 4.2.3.1 of the Property Management Agreement includes the \$2,921,001.52 in initial OCIP premiums and fees paid in 2014 for the project OCIP policy and excludes City staff costs and any subsequent OCIP policy premiums or fees related to the procurement and management of the OCIP policy (z) require the payment of the 4% Design Build Fee related to the initial OCIP premium set forth in clause (y) (\$116,840.06) on or before the date that is thirty (30) calendar days after the Effective Date.

11. Withdrawal of Prologis/CCIG. Effective upon the assignment and delegations of the applicable rights under the LDDA to CCIGOG and Prologis and the execution of this Third Amendment, Prologis/CCIG shall be deemed to have withdrawn as a Party to the LDDA and thereafter shall have no further rights or liability under the LDDA. Nothing herein amends, modifies or affects the Billboard Agreement between the City and Prologis/CCIG, which shall continue in full force and effect.

12. Effectiveness of the LDDA. Except as expressly set forth in this Third Amendment to the LDDA, all provisions of the LDDA shall remain unchanged and in full force and effect.

13. No Waiver of Rights or Obligations. The Parties acknowledge and agree that the Parties' execution of this Third Amendment and the subsequent execution of a Ground Lease shall not in any way cause or be interpreted as a waiver of, or create a defense to the exercise or performance of, the Parties' respective rights and obligations under the LDDA or that certain Development Agreement by and between City of Oakland and Prologis CCIG Oakland Global, LLC regarding the Property and Project Known as Gateway Development/Oakland Global, dated July 16, 2013 (the "**Development Agreement**"), including, without limitation, the Developer Parties' vested development rights pursuant to applicable provisions of the Development Agreement or the City's rights, notwithstanding any vested development rights of the Developer Parties, to fully consider, and when applicable adopt and apply to the Project future City regulations pursuant to applicable provisions of the Development Agreement, including but not limited to regulations pertaining to the transportation, transloading, handling and/or export of coal or petroleum coke. Therefore, the parties agree that none of the Parties may use the fact of entering into this Third

Amendment and/or any of the Ground Leases as the basis of a claim, or as a defense to a claim, against another Party hereto, whether under the LDDA, the Development Agreement or otherwise. A general acknowledgment consistent with this acknowledgement herein shall be included in the applicable leases.

14. Counterparts. This Third Amendment to the LDDA may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all Parties, even though all Parties are not signatory to the same counterpart.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties have caused this Third Amendment to the LDDA to be executed by their duly appointed representatives as of the date first above written.

PROLOGIS/CCIG:

Prologis CCIG Oakland Global, LLC, a Delaware limited liability company,

By: 

Name: Jeff Migos

Title: Vice President, Investment Officer

Its: Authorized signatory

By: 

Name: Philine Tassan

Title: Member

Its: Authorized signatory

OBOT:

Oakland Bulk and Oversized Terminal, LLC, a California limited liability company,

By: 


Name: Philine Tassan

Title: President or Sole member

Its: Authorized signatory

CCIGOG:

CCIG Oakland Global, LLC, a California limited liability company,

By: 

Name: Phuew Kham

Title: Managing member

Its: Authorized signatory

PROLOGIS:

Prologis Mesquite, LLC, a Delaware limited liability company,

By: 

Name: Jeff Major

Title: Vice President, Investment Officer

Its: Authorized signatory

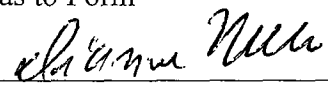
CITY:

CITY OF OAKLAND,
a municipal corporation

By: 

City Administrator Sabrina Landreth

Approved as to Form

By: 

City Attorney

Schedule 1
New Phases (MH-1, NCGW, CE-1 and CE-2)

[See attached]

Schedule 1.5(a)
Prologis Liquidated Damages Guarantee

[See attached]

GUARANTY OF PROLOGIS LIQUIDATED DAMAGES

THIS GUARANTY OF PROLOGIS LIQUIDATED DAMAGES ("**Guaranty**"), dated as of _____, 2015, is executed and delivered by PROLOGIS, L.P., a Delaware limited partnership qualified to transact business in California ("**Guarantor**"), in favor of the CITY OF OAKLAND, an independent municipal corporation ("**City**"), with reference to the facts set forth in the Recitals below. Guarantor and City are hereinafter sometimes referred to individually as a "party" and collectively as the "parties." Unless otherwise defined herein, all capitalized terms used in this Guaranty shall have the same meanings set forth in the LDDA (as defined in the first Recital below):

RECITALS

WHEREAS, Guarantor is an Affiliate of Prologis Mesquite, LLC, a Delaware limited liability company, ("**Prologis**"), and is willing to execute and deliver this Guaranty for the express and intended purpose of inducing City to consent to Prologis CCIG Oakland Global, LLC's assignment and delegation to Prologis of certain rights and obligations under that certain Army Base Gateway Redevelopment Project LDDA Development and Disposition Agreement, dated as of December 4, 2012, by and between City and certain developer parties, including all exhibits and schedules attached thereto (the "**Original LDDA**"), and as amended (the "**LDDA**") with respect to certain property described in the LDDA as the East Gateway and the New Central Gateway Lease Area and located in the City of Oakland, State of California (the "**Prologis Lease Property**"); and

WHEREAS, upon the satisfaction or (where applicable) Prologis' waiver of certain conditions precedent set forth in the LDDA, Prologis (or its permitted, affiliated assignees/designees) is obligated under the LDDA to ground lease the Prologis Lease Property from City in up to three (3) Phases, and to pay to City the Liquidated Damages related to the Prologis Lease Property, as defined and in the amount, time and manner set forth in the LDDA, in the event that Prologis defaults with respect to its obligations under the LDDA to Close Escrow on the ground lease for each Phase of the Prologis Lease Property; and

WHEREAS, concurrently with the Effective Date of the Third Amendment to the LDDA, Prologis is required to deliver to City this guaranty of payment of, as applicable, the EGW Only Liquidated Damages, CE-2 Only Liquidated Damages, the NCGW Only Liquidated Damages, the NCGW/CE-2 Liquidated Damages or NCGW/EGW Liquidated Damages (collectively, the "**Prologis Liquidated Damages**") for the breach of an obligation to Close Escrow on the ground lease for the East Gateway (or portion thereof) or New Central Gateway Lease Area executed by Guarantor.

NOW, THEREFORE, Guarantor, in order to induce City to consent to the partial assignment of the LDDA to Prologis and for other valuable consideration received by Prologis and Guarantor, the receipt and adequacy of which are hereby acknowledged, does hereby agree as follows:

GUARANTY

1. Guaranty. Guarantor hereby unconditionally, absolutely and irrevocably guarantees to City all of the following (collectively, the "**Guaranteed Obligations**"): (a) the payment in full of the Prologis Liquidated Damages (or applicable portion thereof) for the breach of an obligation to Close Escrow on the ground lease for the East Gateway (or portion thereof) or New Central Gateway Lease Area in the amount and in the time and manner set forth in the LDDA; and (b) the payment in full of all costs and expenses of City, including but not limited to reasonable attorneys' fees (for attorneys of the Office of City Attorney of the City of Oakland and private attorneys), incurred in the enforcement or collection of the Prologis Liquidated Damages (or applicable portion thereof).

2. Further Instruments. Guarantor shall execute and deliver to City such further documents, instruments and agreements, upon such terms and conditions, as City may reasonably require, in order to further evidence Guarantor's agreement to satisfy the Guaranteed Obligations as required hereunder.

3. Guarantor Authorizations. Guarantor authorizes City, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time, to: (a) amend or modify the terms and conditions of the LDDA; or (b) assign this Guaranty in whole or in part, provided that such assignment is in connection with, and to the transferee of, City's interest in all or any portion of the Lease Property.

4. Requirements for Release. The Guaranteed Obligations shall be deemed to be fully performed, and Guarantor shall be released from any further liability hereunder, upon the satisfaction by Prologis or Guarantor, or written waiver by City (which waiver shall be in City's sole and absolute discretion), of all of the following requirements (the "**Requirements**"):

4.1 In the event Prologis is not in default of its obligations under the LDDA to Close Escrow on the ground lease for the Prologis Lease Property, then upon the occurrence of either of the following:

4.1.1 The Close of Escrow on the applicable ground leases for the Prologis Lease Property; or

4.1.2 The expiration or termination of the LDDA in accordance with the provisions thereof.

4.2 In the event Prologis is in default of its obligations under the LDDA to Close Escrow on the ground lease for the Prologis Lease Property (or portion thereof), then upon satisfaction in full of the Guaranteed Obligations in accordance with this Guaranty.

5. Termination Instrument. At the request of Guarantor, City agrees to deliver to Guarantor an instrument evidencing the termination of this Guaranty following satisfaction in full of the Guaranteed Obligations and fulfillment of the Requirements as expressly provided above.

6. Independent Obligations. Guarantor's obligations hereunder are independent of the obligations of Prologis, or any assignee of the LDDA, and a separate action or actions maybe brought and prosecuted against Guarantor whether or not action is brought against Prologis or any such assignee or whether or not Prologis or any such assignee be joined in any such action or actions.

7. Further Authorizations. Guarantor authorizes City, without notice or demand and without affecting Guarantor's liability hereunder, from time to time to (a) extend, accelerate, or otherwise change the time for any payment provided for in the LDDA, or any covenant, term or condition of the LDDA, in any respect to impair or suspend City's remedies or rights against Prologis in respect to the LDDA, and to consent to any assignment, or reassignment of the LDDA; (b) take and hold security for any payment provided for in the LDDA or for the performance of any covenant, term or condition of the LDDA, or exchange, waive or release any such security; and (c) apply such security and direct the order or manner of sale thereof as City in its discretion may determine. City may without notice assign this Guaranty, the LDDA, or any sums payable thereunder. Notwithstanding any extension of the LDDA, this Guaranty shall continue until all of the Guaranteed Obligations have been satisfied in full and the Requirements have been fulfilled.

8. Preferential Payments. Guarantor further agrees that to the extent Prologis or Guarantor makes any payment to City in satisfaction of any part of the Guaranteed Obligations, and all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by City or paid over to a trustee, receiver or any other entity, under any applicable state or federal law, including, without limitation, laws pertaining to bankruptcy, insolvency or other proceeding (any such payment is hereinafter referred to as a "**Preferential Payment**"), then notwithstanding any prior revocation, termination, surrender or discharge of this Guaranty in whole or part, this Guaranty shall continue to be effective or shall be reinstated, as the case may be, and, to the extent of such payment or repayment by City, the Guaranteed Obligations or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if said Preferential Payment had not been made.

9. Waivers of Enforcement. Guarantor acknowledges and agrees that the liabilities created by this Guaranty are direct and are not conditioned upon pursuit by City of any remedy City may have against Prologis or any other person or any security. Guarantor waives any right to require City to (a) proceed against Prologis or any other person or entity; (b) proceed against or exhaust any security held from Prologis or Guarantor; (c) pursue any other remedy in City's power which Guarantor cannot itself pursue, and which would lighten its burden; or (d) make any presentment. Guarantor waives any defense arising by reason of any disability or other defense of Prologis, or any assignee of the LDDA, by reason of the cessation from any cause whatsoever of the liability of Prologis, or any assignee of the LDDA, or by reason of any lack of authority of any officer, director, partner, agent or other person acting or purporting to act on behalf of Prologis, or any defect in the formation of Prologis. Guarantor waives all demands upon and notices to Prologis, or any assignee of the LDDA, and to Guarantor other than as provided herein, including, without limitation, demands for performance, notices of non-performance, notices of non-payment and notice of acceptance of this Guaranty. Guarantor

waives the benefit of any statute of limitations affecting its obligations hereunder or the enforcement thereof.

10. WAIVERS OF STATUTES. WITHOUT LIMITING THE GENERALITY OF ANY OTHER WAIVER OR OTHER PROVISION SET FORTH IN THIS GUARANTY, GUARANTOR HEREBY WAIVES, TO THE MAXIMUM EXTENT SUCH WAIVER IS PERMITTED BY LAW, ANY AND ALL BENEFITS, DEFENSES TO PAYMENT OR PERFORMANCE, OR ANY RIGHT TO PARTIAL OR COMPLETE EXONERATION ARISING DIRECTLY OR INDIRECTLY UNDER ANY ONE OR MORE OF CALIFORNIA CIVIL CODE SECTIONS 2799, 2808, 2809, 2810, 2815, 2819, 2820, 2821, 2822, 2838, 2839, 2845, 2847, 2848, 2849, AND 2850.

11. Waivers of Subrogation. Until such time as the Guaranteed Obligations have been performed in full, Guarantor waives any and all rights to be subrogated to the position of City or to have the benefit of any lien, security interest or other guaranty now or later held by City for the Guaranteed Obligations or to enforce any remedy which City now or later has against Prologis or any other person. Guarantor agrees that until such time as the Guaranteed Obligations have been performed in full and the period of time has expired during which any payment made by Prologis, any assignee of the LDDA, or Guarantor to City on account of the Guaranteed Obligations may be determined to be a Preferential Payment, any claim or other rights which Guarantor may now have or hereafter acquire against Prologis, any assignee of the LDDA, or any other guarantor of all or any of the Guaranteed Obligations that arise from the existence or performance of Guarantor's obligations under this Guaranty or any other document executed in connection with the LDDA, and under any extensions, renewals or modifications thereof (all such claims and rights are referred to as "**Guarantor's Conditional Rights**"), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy of City against Prologis or any assignee of the LDDA or any collateral which City now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from Prologis or any assignee of the LDDA, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights, shall be subordinate to City's right to full performance of the Guaranteed Obligations, and Guarantor shall not enforce Guarantor's Conditional Rights during such period. If, notwithstanding the foregoing provision, any amount shall be paid to Guarantor on account of Guarantor's Conditional Rights and either (i) such amount is paid to Guarantor at any time when the Guaranteed Obligations shall not have been paid or performed in full, or (ii) regardless of when such amount is paid to Guarantor, any payments made by Prologis or any assignee of the LDDA to City on account of the Guaranteed Obligations is at any time determined to be a Preferential Payment, then such amount paid to Guarantor shall be held in trust for the benefit of the City and shall forthwith be paid to City to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in such order as City in its sole and absolute discretion, shall determine. Guarantor represents, warrants and covenants that (a) there do not now exist any agreements between Guarantor and Prologis which are inconsistent with the waiver of subrogation contained herein, (b) Guarantor will not hereafter enter into any such agreements with Prologis, and (c) any such purported agreements are void.

12. Subordination. To the extent that any of the provisions of the immediately preceding paragraph shall not be enforceable, Guarantor agrees that until such time as the Guaranteed Obligations have been paid and performed in full and the period of time has expired during which any payment made by Prologis, any assignee of the LDDA, or Guarantor to City on account of the Guaranteed Obligations may be determined to be a Preferential Payment, Guarantor's Conditional Rights to the extent not validly waived shall be subordinate to City's right to full performance of the Guaranteed Obligations, and Guarantor shall not enforce Guarantor's Conditional Rights during such period.

13. Obligations to Cure Prologis Defaults. Within thirty (30) days after Guarantor's receipt of written notice from City of any default by Prologis under the LDDA pertaining to any of the Guaranteed Obligations, Guarantor shall cure or cause Prologis to cure any such monetary default and any other such Prologis defaults that are reasonably susceptible of cure by Guarantor within such period, subject to delays for Force Majeure. For purposes of determining the defaults which are reasonably susceptible of cure by Guarantor, the fact that Guarantor controls Prologis or a member or Affiliate of Prologis will be taken into account, and any defaults that Guarantor is able to cure within such period through the legal, valid and reasonable exercise of such control shall be deemed curable by Guarantor.

14. Attorneys' Fees. Guarantor agrees to pay reasonable attorneys' fees (both fees for attorneys of the Office of City Attorney of the City of Oakland and private attorneys) and all other costs and expenses which may be incurred by City in the enforcement of this Guaranty or otherwise arising out of the subject matter of this Guaranty. For purposes of this Guaranty, the reasonable fees of attorneys of the Office of City Attorney of the City of Oakland shall be based on the fees then regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in the City of Oakland in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

15. No Waiver. No right or power of City shall be deemed to have been waived by any act or conduct on the part of City, or by any neglect to exercise such right or power, or by any delay in so doing; and every right and power of City shall continue in full force and effect until such right or power is specifically waived by an instrument in writing executed by City.

16. No Assignment. Guarantor shall not assign or delegate, in whole or in part, any of its rights or obligations under this Guaranty. Subject to the preceding sentence, this Guaranty shall bind Guarantor, its successors and assigns, and shall inure to the benefit of City, and its successors and assigns.

17. Governing Law. This Guaranty is entered into in the City of Oakland and each and every term and provision thereof shall be construed in accordance with the laws of the State of California, without reference to its conflict of laws provisions.

18. Guarantor Knowledge. Guarantor warrants and agrees that each of the waivers set forth in this Guaranty is made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to

public policy or law. If any of said waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by law.

19. Notice. Any notice to be given City hereunder shall be given at the address and in the manner set forth in Section 10.3 of the Original LDDA. Any notice to be given Guarantor shall be given at the address set forth below Guarantor's signature and in the manner set forth in Section 10.3 of the Original LDDA.

20. Representations and Warranties. Guarantor represents, warrants and covenants that (i) it has full power and authority to execute, deliver and perform its obligations under this Guaranty, (ii) the execution, delivery and performance has been duly authorized by all requisite action on its part, (iii) this Guaranty constitutes the valid, legal and binding obligation of Guarantor, (iv) there are no actions, suits or proceedings pending, or to the knowledge of Guarantor threatened against or affecting Guarantor which could have a material adverse effect on the ability of Guarantor to honor its obligations hereunder, or involving the validity or enforceability of this Guaranty, at law or in equity, (v) the consummation of the transaction hereby contemplated and performance of this Guaranty will not result in the breach of, or constitute a default under, any mortgage, deed of trust, LDDA, bank loan or credit agreement, partnership agreement, corporate charter, bylaws or other agreement or instrument to which Guarantor is a party or by which it is or may be bound or affected, and (vi) Guarantor has no counterclaims, offsets or defenses with respect to this Guaranty.

21. Independent Investigation. Guarantor delivers this Guaranty based solely on its independent investigation of the financial condition and capabilities of Prologis and is not relying on any information furnished by City. Guarantor assumes full responsibility for obtaining any further information concerning Prologis' financial condition and capabilities or any other matter that Guarantor may deem necessary or appropriate from time to time. Guarantor waives any duty on the part of City, and agrees that it is not relying upon nor expecting City to disclose to Guarantor any fact now or later known by City, whether relating to the operations or condition of Prologis, the existence, liabilities or financial condition or capabilities of any other party, the occurrence of any default with respect to the Guaranteed Obligations, or otherwise, notwithstanding any effect these facts may have upon Guarantor's risk under this Guaranty or Guarantor's rights against Prologis. Guarantor knowingly accepts the full range of risk encompassed by the scope of this Guaranty, including without limitation, the possibility that Prologis will incur obligations for which Guarantor will be liable under this Guaranty after Prologis' financial condition or ability to pay its lawful debts when they fall due has deteriorated. Guarantor agrees that no security now or later held by City for the performance of the Guaranteed Obligations, whether from Prologis, any guarantor or surety, or otherwise, and whether in the nature of a security interest, pledge, lien, assignment, setoff, suretyship, guaranty, indemnity, insurance or otherwise, shall affect in any manner the unconditional obligation of Guarantor under this Guaranty, and City, in its sole discretion, without notice to Guarantor, may release, exchange, enforce and otherwise deal with any security without affecting in any manner the unconditional obligation of Guarantor under this Guaranty.

22. Review of LDDA. Guarantor has received a copy of the LDDA, as executed or in the form to be executed, and is satisfied with all of the terms and conditions thereof (to the extent that same are applicable to the Guaranteed Obligations). In executing and delivering this

Guaranty, Guarantor has relied on its own review of the LDDA and not on any representation or statement of City or any other person.

23. Jurisdiction and Venue. Guarantor hereby irrevocably submit to the jurisdiction and venue of any State court in Oakland, California, in any action or proceeding brought to enforce or otherwise arising out of or related to this Guaranty and irrevocably waive to the fullest extent permitted by law any objection which Guarantor may now or hereafter have to the resting of such jurisdiction and venue in such forum, and hereby further irrevocably waives any claim that such forum is an inconvenient forum.

24. Entire Agreement/Amendment. Except as otherwise expressly set forth herein, this Guaranty, including all recitals, exhibits and schedules hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous understandings, correspondence, negotiations, representations, promises and agreements, oral or written, by or between the parties, with respect to the subject matter hereof. This Guaranty may be amended, modified, or supplemented only by a writing signed by both parties.

25. Counterparts. This Guaranty, and all amendments and supplements to it, may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The parties shall be entitled to rely upon facsimile copies or electronic copies of a party's signature to this Guaranty and any instrument executed in connection herewith.

26. Severability. If any of the provisions contained in this Guaranty shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Guaranty, and this Guaranty shall be construed as if such invalid, illegal, or unenforceable provision had not been contained in this Guaranty.

27. Interpretation. Captions and headings in this Guaranty are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Guaranty. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as "herein," "hereto," and "hereunder" shall refer to this Guaranty in its entirety and not to any specific section or paragraph; (c) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" (d) "shall," "will," "must," "agrees," and "covenants," are mandatory and "may" is permissive; and (e) "or" is not exclusive. The parties have jointly participated in the negotiation and drafting of this Guaranty, and this Guaranty shall be construed fairly and equally as to the parties, without regard to any rules of construction relating to the party who drafted a particular provision of this Guaranty.

28. No Third Party Beneficiaries. This Guaranty is made solely for the benefit of the parties to this Guaranty and their respective successors and permitted assigns, and no other person or entity shall have or acquire any rights or remedies under this Guaranty, except as otherwise expressly provided in this Guaranty.

29. Adequate Consideration. Guarantor represents and warrants that it has received adequate and sufficient consideration for the Guaranteed Obligations incurred under this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date first set forth above.

GUARANTOR:

PROLOGIS, L.P.,
a Delaware limited liability company qualified to
transact business in California

By: Prologis, Inc., a Maryland corporation
qualified to transact business in California

Its: General Partner

By: _____

Name: _____

Title: _____

Address for Notices to Guarantor:

ACCEPTED BY CITY OF OAKLAND

By: _____

Name: _____

Its: _____

Approved as to form:

Deputy City Attorney

Schedule 1.5(b)
CCIG Liquidated Damages Guarantee

[See attached]

GUARANTY OF OBOT/CCIGOG LIQUIDATED DAMAGES

THIS GUARANTY OF OBOT/CCIGOG LIQUIDATED DAMAGES ("**Guaranty**"), dated as of _____, 2015, is executed and delivered by California Capital & Investment Group, Inc., a California corporation qualified to transact business in California ("**Guarantor**"), in favor of the CITY OF OAKLAND, an independent municipal corporation ("**City**"), with reference to the facts set forth in the Recitals below. Guarantor and City are hereinafter sometimes referred to individually as a "party" and collectively as the "parties." Unless otherwise defined herein, all capitalized terms used in this Guaranty shall have the same meanings set forth in the LDDA (as defined in the first Recital below):

RECITALS

WHEREAS, Guarantor is an Affiliate of both Oakland Bulk and Oversized terminal, LLC, a California limited liability company ("**OBOT**"), and CCIG Oakland Global, LLC, a California limited liability company, ("**CCIGOG**"), and is willing to execute and deliver this Guaranty for the express and intended purpose of inducing City to consent to Prologis CCIG Oakland Global, LLC's assignment and delegation to OBOT and CCIGOG of certain rights and obligations under that certain Army Base Gateway Redevelopment Project LDDA Development and Disposition Agreement, dated as of December 4, 2012, by and between City and certain developer parties, including all exhibits and schedules attached thereto (the "**Original LDDA**"), and as amended (the "**LDDA**") with respect to, inter alia, that certain property described in the LDDA as the West Gateway and the MH-1 Lease Area and located in the City of Oakland, State of California (the "**OBOT/CCIGOG Lease Property**"); and

WHEREAS, upon the satisfaction or (where applicable) OBOT/CCIGOG's waiver of certain conditions precedent set forth in the LDDA, OBOT or CCIGOG (as applicable) or their respective permitted, affiliated assignees/designees) is obligated under the LDDA to ground lease the OBOT/CCIGOG Lease Property from City in two (2) Phases, and to pay to City the Liquidated Damages related to the OBOT/CCIGOG Lease Property, as defined and in the amount, time and manner set forth in the LDDA, in the event that OBOT or CCIGOG defaults with respect to its obligations under the LDDA to Close Escrow on the ground lease for each Phase of the OBOT/CCIGOG Lease Property; and

WHEREAS, concurrently with the Effective Date of the Third Amendment to the LDDA, Developer is required to deliver to City this guaranty of payment of the WGW Only Liquidated Damages, the MH-1 Only Liquidated Damages or the WGW/MH-1 Liquidated Damages (collectively, the "**OBOT/CCIGOG Liquidated Damages**") for the breach of any Guaranteed Obligations (defined below) by Guarantor.

NOW, THEREFORE, Guarantor, in order to induce City to consent to the partial assignment of the LDDA to OBOT/CCIGOG and for other valuable consideration received by Developer and Guarantor, the receipt and adequacy of which are hereby acknowledged, does hereby agree as follows:

GUARANTY

1. Guaranty. Guarantor hereby unconditionally, absolutely and irrevocably guarantees to City all of the following (collectively, the "**Guaranteed Obligations**"): (a) the payment in full of the OBOT/CCIGOG Liquidated Damages (or applicable portion thereof) for the breach of an obligation to either (i) Close Escrow on the ground lease for the West Gateway or the MH-1 Lease Area in the amount and in the time and manner set forth in the LDDA and/or (ii) the failure to pay the funds required with respect to the OBOT Wharf and Rail Improvements pursuant to Section 3.3.1.1.2 of the Original LDDA; and (b) the payment in full of all costs and expenses of City, including but not limited to reasonable attorneys' fees (for attorneys of the Office of City Attorney of the City of Oakland and private attorneys), incurred in the enforcement or collection of the OBOT/CCIGOG Liquidated Damages (or applicable portion thereof).

2. Further Instruments. Guarantor shall execute and deliver to City such further documents, instruments and agreements, upon such terms and conditions, as City may reasonably require, in order to further evidence Guarantor's agreement to satisfy the Guaranteed Obligations as required hereunder.

3. Guarantor Authorizations. Guarantor authorizes City, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time, to: (a) amend or modify the terms and conditions of the LDDA; or (b) assign this Guaranty in whole or in part, provided that such assignment is in connection with, and to the transferee of, City's interest in all or any portion of the Lease Property.

4. Requirements for Release. The Guaranteed Obligations shall be deemed to be fully performed, and Guarantor shall be released from any further liability hereunder, upon the satisfaction by OBOT or CCIGOG (as applicable) or Guarantor, or written waiver by City (which waiver shall be in City's sole and absolute discretion), of all of the following requirements (the "**Requirements**"):

4.1 In the event OBOT or CCIGOG (as applicable) is not in default of its obligations under the LDDA to Close Escrow on the ground lease for the West Gateway or the MH-1 Lease Area, then upon the occurrence of either of the following:

4.1.1 The Close of Escrow on the applicable ground lease for both Phases of the OBOT/CCIGOG Lease Area; or

4.1.2 The expiration or termination of the LDDA in accordance with the provisions thereof.

4.2 In the event OBOT or CCIGOG (as applicable) is in default of its obligations under the LDDA to Close Escrow on the ground lease for the West Gateway or the MH-1 Lease Area, then upon satisfaction in full of the Guaranteed Obligations in accordance with this Guaranty.

5. Termination Instrument. At the request of Guarantor, City agrees to deliver to Guarantor an instrument evidencing the termination of this Guaranty following satisfaction in

full of the Guaranteed Obligations and fulfillment of the Requirements as expressly provided above.

6. Independent Obligations. Guarantor's obligations hereunder are independent of the obligations of OBOT or CCIGOG, or any assignee of the LDDA, and a separate action or actions may be brought and prosecuted against Guarantor whether or not action is brought against OBOT or CCIGOG (as applicable) or any such assignee or whether or not OBOT or CCIGOG (as applicable) or any such assignee be joined in any such action or actions.

7. Further Authorizations. Guarantor authorizes City, without notice or demand and without affecting Guarantor's liability hereunder, from time to time to (a) extend, accelerate, or otherwise change the time for any payment provided for in the LDDA, or any covenant, term or condition of the LDDA, in any respect to impair or suspend City's remedies or rights against OBOT or CCIGOG (as applicable) in respect to the LDDA, and to consent to any assignment, or reassignment of the LDDA; (b) take and hold security for any payment provided for in the LDDA or for the performance of any covenant, term or condition of the LDDA, or exchange, waive or release any such security; and (c) apply such security and direct the order or manner of sale thereof as City in its discretion may determine. City may without notice assign this Guaranty, the LDDA, or any sums payable thereunder. Notwithstanding any extension of the LDDA, this Guaranty shall continue until all of the Guaranteed Obligations have been satisfied in full and the Requirements have been fulfilled.

8. Preferential Payments. Guarantor further agrees that to the extent OBOT or CCIGOG (as applicable) or Guarantor makes any payment to City in satisfaction of any part of the Guaranteed Obligations, and all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by City or paid over to a trustee, receiver or any other entity, under any applicable state or federal law, including, without limitation, laws pertaining to bankruptcy, insolvency or other proceeding (any such payment is hereinafter referred to as a "**Preferential Payment**"), then notwithstanding any prior revocation, termination, surrender or discharge of this Guaranty in whole or part, this Guaranty shall continue to be effective or shall be reinstated, as the case may be, and, to the extent of such payment or repayment by City, the Guaranteed Obligations or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if said Preferential Payment had not been made.

9. Waivers of Enforcement. Guarantor acknowledges and agrees that the liabilities created by this Guaranty are direct and are not conditioned upon pursuit by City of any remedy City may have against OBOT or CCIGOG (as applicable) or any other person or any security. Guarantor waives any right to require City to (a) proceed against OBOT or CCIGOG (as applicable) or any other person or entity; (b) proceed against or exhaust any security held from OBOT or CCIGOG (as applicable) or Guarantor; (c) pursue any other remedy in City's power which Guarantor cannot itself pursue, and which would lighten its burden; or (d) make any presentment. Guarantor waives any defense arising by reason of any disability or other defense of OBOT or CCIGOG (as applicable), or any assignee of the LDDA, by reason of the cessation from any cause whatsoever of the liability of OBOT or CCIGOG (as applicable), or any assignee of the LDDA, or by reason of any lack of authority of any officer, director, partner, agent or other person acting or purporting to act on behalf of OBOT or CCIGOG (as applicable), or any

defect in the formation of OBOT or CCIGOG (as applicable). Guarantor waives all demands upon and notices to OBOT or CCIGOG (as applicable), or any assignee of the LDDA, and to Guarantor other than as provided herein, including, without limitation, demands for performance, notices of non-performance, notices of non-payment and notice of acceptance of this Guaranty. Guarantor waives the benefit of any statute of limitations affecting its obligations hereunder or the enforcement thereof.

10. WAIVERS OF STATUTES. WITHOUT LIMITING THE GENERALITY OF ANY OTHER WAIVER OR OTHER PROVISION SET FORTH IN THIS GUARANTY, GUARANTOR HEREBY WAIVES, TO THE MAXIMUM EXTENT SUCH WAIVER IS PERMITTED BY LAW, ANY AND ALL BENEFITS, DEFENSES TO PAYMENT OR PERFORMANCE, OR ANY RIGHT TO PARTIAL OR COMPLETE EXONERATION ARISING DIRECTLY OR INDIRECTLY UNDER ANY ONE OR MORE OF CALIFORNIA CIVIL CODE SECTIONS 2799, 2808, 2809, 2810, 2815, 2819, 2820, 2821, 2822, 2838, 2839, 2845, 2847, 2848, 2849, AND 2850.

11. Waivers of Subrogation. Until such time as the Guaranteed Obligations have been performed in full, Guarantor waives any and all rights to be subrogated to the position of City or to have the benefit of any lien, security interest or other guaranty now or later held by City for the Guaranteed Obligations or to enforce any remedy which City now or later has against OBOT or CCIGOG (as applicable) or any other person. Guarantor agrees that until such time as the Guaranteed Obligations have been performed in full and the period of time has expired during which any payment made by OBOT or CCIGOG (as applicable), any assignee of the LDDA, or Guarantor to City on account of the Guaranteed Obligations may be determined to be a Preferential Payment, any claim or other rights which Guarantor may now have or hereafter acquire against OBOT or CCIGOG (as applicable), any assignee of the LDDA, or any other guarantor of all or any of the Guaranteed Obligations that arise from the existence or performance of Guarantor's obligations under this Guaranty or any other document executed in connection with the LDDA, and under any extensions, renewals or modifications thereof (all such claims and rights are referred to as "**Guarantor's Conditional Rights**"), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy of City against OBOT or CCIGOG (as applicable) or any assignee of the LDDA or any collateral which City now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from OBOT or CCIGOG (as applicable) or any assignee of the LDDA, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights, shall be subordinate to City's right to full performance of the Guaranteed Obligations, and Guarantor shall not enforce Guarantor's Conditional Rights during such period. If, notwithstanding the foregoing provision, any amount shall be paid to Guarantor on account of Guarantor's Conditional Rights and either (i) such amount is paid to Guarantor at any time when the Guaranteed Obligations shall not have been paid or performed in full, or (ii) regardless of when such amount is paid to Guarantor, any payments made by OBOT or CCIGOG (as applicable) or any assignee of the LDDA to City on account of the Guaranteed Obligations is at any time determined to be a Preferential Payment, then such amount paid to Guarantor shall be held in trust for the benefit of the City and shall forthwith be paid to City to be credited and applied upon the Guaranteed Obligations, whether

matured or unmatured, in such order as City in its sole and absolute discretion, shall determine. Guarantor represents, warrants and covenants that (a) there do not now exist any agreements between Guarantor and OBOT or CCIGOG (as applicable) which are inconsistent with the waiver of subrogation contained herein, (b) Guarantor will not hereafter enter into any such agreements with OBOT or CCIGOG (as applicable), and (c) any such purported agreements are void.

12. Subordination. To the extent that any of the provisions of the immediately preceding paragraph shall not be enforceable, Guarantor agrees that until such time as the Guaranteed Obligations have been paid and performed in full and the period of time has expired during which any payment made by OBOT or CCIGOG (as applicable), any assignee of the LDDA, or Guarantor to City on account of the Guaranteed Obligations may be determined to be a Preferential Payment, Guarantor's Conditional Rights to the extent not validly waived shall be subordinate to City's right to full performance of the Guaranteed Obligations, and Guarantor shall not enforce Guarantor's Conditional Rights during such period.

13. Obligations to Cure OBOT/CCIGOG Defaults. Within thirty (30) days after Guarantor's receipt of written notice from City of any default by OBOT or CCIGOG (as applicable) under the LDDA pertaining to any of the Guaranteed Obligations, Guarantor shall cure or cause OBOT or CCIGOG (as applicable) to cure any such monetary default and any other such OBOT or CCIGOG (as applicable) defaults that are reasonably susceptible of cure by Guarantor within such period, subject to delays for Force Majeure. For purposes of determining the defaults which are reasonably susceptible of cure by Guarantor, the fact that Guarantor controls OBOT or CCIGOG or a member or Affiliate of OBOT or CCIGOG will be taken into account, and any defaults that Guarantor is able to cure within such period through the legal, valid and reasonable exercise of such control shall be deemed curable by Guarantor.

14. Attorneys' Fees. Guarantor agrees to pay reasonable attorneys' fees (both fees for attorneys of the Office of City Attorney of the City of Oakland and private attorneys) and all other costs and expenses which may be incurred by City in the enforcement of this Guaranty or otherwise arising out of the subject matter of this Guaranty. For purposes of this Guaranty, the reasonable fees of attorneys of the Office of City Attorney of the City of Oakland shall be based on the fees then regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in the City of Oakland in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

15. No Waiver. No right or power of City shall be deemed to have been waived by any act or conduct on the part of City, or by any neglect to exercise such right or power, or by any delay in so doing; and every right and power of City shall continue in full force and effect until such right or power is specifically waived by an instrument in writing executed by City.

16. No Assignment. Guarantor shall not assign or delegate, in whole or in part, any of its rights or obligations under this Guaranty. Subject to the preceding sentence, this Guaranty shall bind Guarantor, its successors and assigns, and shall inure to the benefit of City, and its successors and assigns.

17. Governing Law. This Guaranty is entered into in the City of Oakland and each and every term and provision thereof shall be construed in accordance with the laws of the State of California, without reference to its conflict of laws provisions.

18. Guarantor Knowledge. Guarantor warrants and agrees that each of the waivers set forth in this Guaranty is made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any of said waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by law.

19. Notice. Any notice to be given City hereunder shall be given at the address and in the manner set forth in Section 10.3 of the Original LDDA. Any notice to be given Guarantor shall be given at the address set forth below Guarantor's signature and in the manner set forth in Section 10.3 of the Original LDDA.

20. Representations and Warranties. Guarantor represents, warrants and covenants that (i) it has full power and authority to execute, deliver and perform its obligations under this Guaranty, (ii) the execution, delivery and performance has been duly authorized by all requisite action on its part, (iii) this Guaranty constitutes the valid, legal and binding obligation of Guarantor, (iv) there are no actions, suits or proceedings pending, or to the knowledge of Guarantor threatened against or affecting Guarantor which could have a material adverse effect on the ability of Guarantor to honor its obligations hereunder, or involving the validity or enforceability of this Guaranty, at law or in equity, (v) the consummation of the transaction hereby contemplated and performance of this Guaranty will not result in the breach of, or constitute a default under, any mortgage, deed of trust, LDDA, bank loan or credit agreement, partnership agreement, corporate charter, bylaws or other agreement or instrument to which Guarantor is a party or by which it is or may be bound or affected, and (vi) Guarantor has no counterclaims, offsets or defenses with respect to this Guaranty.

21. Independent Investigation. Guarantor delivers this Guaranty based solely on its independent investigation of the financial condition and capabilities of OBOT and CCIGOG and is not relying on any information furnished by City. Guarantor assumes full responsibility for obtaining any further information concerning OBOT/CCIGOG's financial condition and capabilities or any other matter that Guarantor may deem necessary or appropriate from time to time. Guarantor waives any duty on the part of City, and agrees that it is not relying upon nor expecting City to disclose to Guarantor any fact now or later known by City, whether relating to the operations or condition of OBOT or CCIGOG (as applicable), the existence, liabilities or financial condition or capabilities of any other party, the occurrence of any default with respect to the Guaranteed Obligations, or otherwise, notwithstanding any effect these facts may have upon Guarantor's risk under this Guaranty or Guarantor's rights against OBOT or CCIGOG (as applicable). Guarantor knowingly accepts the full range of risk encompassed by the scope of this Guaranty, including without limitation, the possibility that OBOT or CCIGOG will incur obligations for which Guarantor will be liable under this Guaranty after OBOT/CCIGOG's financial condition or ability to pay its lawful debts when they fall due has deteriorated. Guarantor agrees that no security now or later held by City for the performance of the Guaranteed Obligations, whether from OBOT or CCIGOG (as applicable), any guarantor or surety, or otherwise, and whether in the nature of a security interest, pledge, lien, assignment,

setoff, suretyship, guaranty, indemnity, insurance or otherwise, shall affect in any manner the unconditional obligation of Guarantor under this Guaranty, and City, in its sole discretion, without notice to Guarantor, may release, exchange, enforce and otherwise deal with any security without affecting in any manner the unconditional obligation of Guarantor under this Guaranty.

22. Review of LDDA. Guarantor has received a copy of the LDDA, as executed or in the form to be executed, and is satisfied with all of the terms and conditions thereof (to the extent that same are applicable to the Guaranteed Obligations). In executing and delivering this Guaranty, Guarantor has relied on its own review of the LDDA and not on any representation or statement of City or any other person.

23. Jurisdiction and Venue. Guarantor hereby irrevocably submit to the jurisdiction and venue of any State court in Oakland, California, in any action or proceeding brought to enforce or otherwise arising out of or related to this Guaranty and irrevocably waive to the fullest extent permitted by law any objection which Guarantor may now or hereafter have to the resting of such jurisdiction and venue in such forum, and hereby further irrevocably waives any claim that such forum is an inconvenient forum.

24. Entire Agreement/Amendment. Except as otherwise expressly set forth herein, this Guaranty, including all recitals, exhibits and schedules hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous understandings, correspondence, negotiations, representations, promises and agreements, oral or written, by or between the parties, with respect to the subject matter hereof. This Guaranty may be amended, modified, or supplemented only by a writing signed by both parties.

25. Counterparts. This Guaranty, and all amendments and supplements to it, may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The parties shall be entitled to rely upon facsimile copies or electronic copies of a party's signature to this Guaranty and any instrument executed in connection herewith.

26. Severability. If any of the provisions contained in this Guaranty shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Guaranty, and this Guaranty shall be construed as if such invalid, illegal, or unenforceable provision had not been contained in this Guaranty.

27. Interpretation. Captions and headings in this Guaranty are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Guaranty. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as "herein," "hereto," and "hereunder" shall refer to this Guaranty in its entirety and not to any specific section or paragraph; (c) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" (d) "shall," "will," "must," "agrees," and "covenants," are mandatory and "may" is permissive; and (e) "or" is not exclusive. The parties have jointly participated in the

negotiation and drafting of this Guaranty, and this Guaranty shall be construed fairly and equally as to the parties, without regard to any rules of construction relating to the party who drafted a particular provision of this Guaranty.

28. No Third Party Beneficiaries. This Guaranty is made solely for the benefit of the parties to this Guaranty and their respective successors and permitted assigns, and no other person or entity shall have or acquire any rights or remedies under this Guaranty, except as otherwise expressly provided in this Guaranty.

29. Adequate Consideration. Guarantor represents and warrants that it has received adequate and sufficient consideration for the Guaranteed Obligations incurred under this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date first set forth above.

GUARANTOR:

California Capital & Investment Group, Inc., a
California corporation

By: _____

Name: Phil Tagami

Title: President

Address for Notices to Guarantor:

California Capital & Investments, Inc.
The Rotunda Building
300 Frank Ogawa Plaza, Suite 340
Oakland, CA 94612
Attn: Mr. Phil Tagami
Facsimile: (510) 834-5380

With a courtesy copy to:

Law Office of Marc Stice
2201 Broadway, Suite 604
Oakland, CA 94612
Attn: Marc Stice, Esq.
Facsimile: (510) 832-2638

ACCEPTED BY CITY OF OAKLAND

By: _____

Name: _____

Its: _____

Approved as to form:

Deputy City Attorney

Schedule 4.2
Revised Public Improvements Schedule of Performance

1. “Roll Up” Schedule:

- | | |
|---|--------------------|
| a. Right of Way Improvements (Maritime, Wake, East Burma and West Burma): | December 31, 2017 |
| b. Utility Infrastructure (wet and dry): | December 31, 2017. |
| c. CE-1 Lease Area Site Preparation Work: | September 6, 2017 |
| d. CE-2 Lease Area Site Preparation Work: | To be determined |
| e. New Central Gateway Lease Area Site Preparation Work: | To be determined |
| f. MH-1 Lease Area Site Preparation Work: | N/A |
| g. West Gateway Site Preparation Work: | N/A |
| h. Pre-Closing Off-Site Improvements: | To be determined |

Schedule 5.2.1

Location of Port Rail Easement (East Of Wake Rail Improvements)

[See attached]

Schedule 5.2.4
Location of Rail Segments

[See attached]

Schedule 7.1

CE-1 Additional Site Preparation Work

Prologis Surcharge Plan, prepared by Kier & Wright, dated July 1, 2014.

DRAWING	DRAWING NAME	DATE
C1	PRELIMINARY GRADING PLAN	00/00/0000
C2	SURCHARGE PLAN	07/01/2014

CE-1 Grading Plans, prepared by Architectural Dimensions, dated August 13, 2014.

DRAWING	DRAWING NAME	DATE
31	GR-C-3.9 ROUGH GRADING PLAN	08/13/14
32	GR-C- ROUGH GRADING PLAN	09/03/15 (REV 2)
39	GR-C- ROUGH GRADING SECTIONS	08/13/14

Note 1: Drawing Nos. 31 and 32 shall be modified as necessary to be consistent with the Change Order No. 038 to the Design Build Contract issued by the City (and approved by Prologis pursuant to Construction Change Directive No. 023).

Note 2: The City acknowledges that in the event unforeseen geotechnical circumstances and conditions and constraints are discovered in the course of this scope of work for the CE-1 Additional Site Preparation Work that, in the opinion of Berloger Stevens & Associates (as accepted by the City engineer), require further work to meet the objectives of the Geotechnical Report, prepared by Berloger Stevens & Associates, dated December 18, 2014, such revision to the scope of work may be paid for by (i) the unexpended portion of the \$9,863,869 allocated under the MPBR to CE-1 and CE-2 Site Preparation Work or (ii) funds provided to the City by Prologis in advance of the City's execution of the necessary change order.

Schedule 7.3.7(c)
Location of Port Rail Easement (Industry Drill Track No. 1)

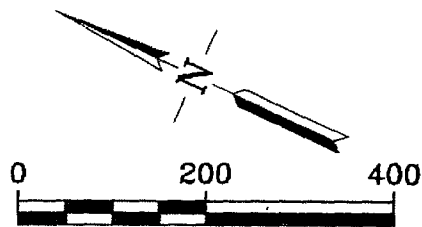
[See attached]

LEGEND

P.O.B. POINT OF BEGINNING
P.O.C. POINT OF COMMENCEMENT
EASEMENT LIMITS

NOTE

BEARINGS AND DISTANCES ARE BASED ON RECORD OF SURVEY NO. 990. ALL DISTANCES SHOWN OR DERIVED FROM THIS DRAWING ARE GRID. TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY BY 1.0000705.



(IN FEET)
1 inch = 200 ft.

LOT 4
16.12± AC.

PARCEL MAP 10095
324 PM 6

S25°21'50"E(R)
R=1739.00'

BURMA ROAD
PARCEL B

EASEMENT AREA
2,367± SQ. FT.
(0.1± AC)
(MEASURED IN
GROUND DISTANCES)

PARCEL G
PORT OF OAKLAND
20069-301849

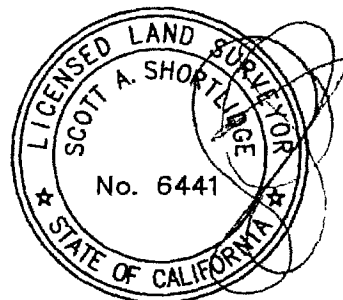
LOT 6
14.49± AC.

PARCEL MAP 10095
324 PM 6

MARTIME STREET
PARCEL B

Line Table		
Line	Bearing	Distance
L1	N47°21'38"E	21.27'

Curve Table			
Curve	Radius	Delta	Length
C1	1739.00'	9°08'21"	277.38'
C2	582.19'	26°53'01"	273.17'
C3	1739.00'	9°36'44"	291.74'



10-13-2015

EXHIBIT B

PLAT RR-10
RAIL ROW - EAST

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

G:\Job2011\111069\Mapping\Plats\PLAT RR-10.dwg

RJA

RUGGERI-JENSEN-AZAR

ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:
1"=200'

DATE:
10-12-2015

JOB NO.:
111069

EXHIBIT – "A"

Plat RR-10 // Rail ROW East

Land Description of a parcel of land situate in the City of Oakland, County of Alameda, State of California, and being a portion of Lot 6 as shown upon Parcel Map 10095 filed August 13, 2013, in Book 325 of Parcel Maps at Pages 6 thru 15 Official Records of said County, and being more particularly described as follows:

Commencing at the southeast corner of Lot 6; Thence along the east line of Lot 6 for the following two (2) courses: (1) North 45° 53' 06" East – 550.21 feet to the beginning of a curve to the right, and (2) in a northeasterly direction 277.38 feet along the arc of said curve to the right, having a radius of 1739.00 feet and through the central angle of 09° 08' 21" for the **Point of Beginning** hereof; Thence crossing through Lot 6 for the following two (2) courses: (1) North 47° 21' 38" East – 21.27 feet for the beginning of a curve to the right, (2) in a northeasterly direction 273.17 feet along the arc of said curve to the right, having a radius of 582.19 feet and through the central angle of 26° 53' 01" to a point on the curving east line of Lot 6, being a curve to the left from which the center bears South 25° 21' 50" East; Thence with said east line in a southwesterly direction 291.74 feet along the arc of said curve to the left, having a radius of 1739.00 feet and through the central angle of 09° 36' 44" to the **Point of Beginning**.

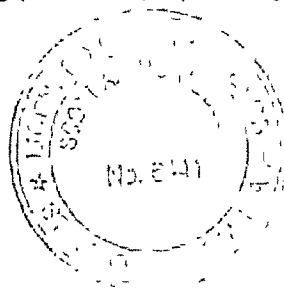
Containing 2,367 square feet (0.1 acres), more or less, measured in ground distances, as depicted on the Plat labeled (Exhibit "B" Plat RR-10 Rail ROW East), attached and hereby made part of the land description.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Official Records of the said County of Alameda. To obtain ground level distances, multiply distances called for herein by 1.0000705.

End of Description

This description and its accompanying plat were prepared by me, or under my direction, in October 2015.


Scott A. Shortidge, LS 6441



10-13-2015
Date

OAKLAND ARMY BASE

Project: 111069

Tue October 13 08:27:25 2015

Parcel Map Check

Parcel name: PLAT RR-10

```

North: 2125219.9440      East : 6040871.3393
Line  Course: N 45-53-06 E Length: 550.21
      North: 2125602.9456      East : 6041266.3593
Curve  Length: 277.38      Radius: 1739.00
      Delta: 9-08-20      Tangent: 138.99
      Chord: 277.09      Course: N 50-27-16 E
      Course In: S 44-06-54 E      Course Out: N 34-58-34 W
      RP North: 2124354.4408      East : 6042476.8786
      End North: 2125779.3620      East : 6041480.0232
Line  Course: N 47-21-38 E Length: 21.27
      North: 2125793.7699      East : 6041495.6701
Curve  Length: 273.17      Radius: 582.19
      Delta: 26-53-02      Tangent: 139.15
      Chord: 270.67      Course: N 60-48-09 E
      Course In: S 42-38-22 E      Course Out: N 15-45-20 W
      RP North: 2125365.4929      East : 6041890.0354
      End North: 2125925.8094      East : 6041731.9512
Curve  Length: 291.74      Radius: 1739.00
      Delta: 9-36-44      Tangent: 146.21
      Chord: 291.40      Course: S 59-49-48 W
      Course In: S 25-21-50 E      Course Out: N 34-58-34 W
      RP North: 2124354.4395      East : 6042476.8792
      End North: 2125779.3607      East : 6041480.0238
Curve  Length: 277.38      Radius: 1739.00
      Delta: 9-08-20      Tangent: 138.99
      Chord: 277.09      Course: S 50-27-16 W
      Course In: S 34-58-34 E      Course Out: N 44-06-54 W
      RP North: 2124354.4395      East : 6042476.8792
      End North: 2125602.9443      East : 6041266.3599
Line  Course: S 45-53-06 W Length: 550.21
      North: 2125219.9427      East : 6040871.3399

```

Perimeter: 2241.37 Area: 2,367 Sq Ft 0.05 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0014 Course: S 23-21-52 E

Error North: -0.00128 East : 0.00055

Precision 1: 1,600,971.43

**ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE MEMBERS OF PROLOGIS CCIG OAKLAND GLOBAL, LLC
A Delaware limited liability company**

Pursuant to the provisions of the Amended and Restated Limited Liability Company Agreement (the "LLC Agreement") of Prologis CCIG Oakland Global, LLC (the "Company"), the undersigned constitute all of the Members of the Company and have the authority to direct the Company with respect to the matters set forth herein and, pursuant to such authority, hereby consent to the following resolution effective October 19, 2015:

**THIRD AMENDMENT TO
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT**

WHEREAS, the Company has been provided an opportunity to enter into the proposed Third Amendment To Army Base Gateway Redevelopment Project Lease Disposition And Development Agreement in the form attached hereto as Exhibit A ("Third Amendment"); and

WHEREAS, after consideration, the Members have determined that it is in the best interest of the Company to enter into the Third Amendment; it is therefore

RESOLVED, that the Members hereby approve the Company's execution and delivery of the Third Amendment and any one of the following individuals are authorized to execute the Third Amendment on behalf of the Company:


Mark Hansen;
Jeff Major; or
Phil Tagami.

ProLogis-Mesquite, LLC

CCIG Oakland Global, LLC

By: Prologis,
a Maryland real estate investment trust,
its sole member

By: 
Jeff Major
Vice President


By: Phil Tagami
Its: President of Sole Member

**ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE MEMBERS OF OAKLAND BULK AND OVERSIZED TERMINAL, LLC
a California limited liability company**

Pursuant to the provisions of the Operating Agreement of Oakland Bulk and Oversized Terminal, LLC (the "Company"), the undersigned constitutes the sole Member of the Company and has the authority to direct the Company with respect to the matters set forth herein and, pursuant to such authority, hereby consent to the following resolution effective October 21, 2015:

**THIRD AMENDMENT TO
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT**

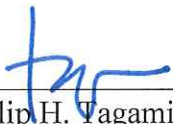
WHEREAS, the Company has been provided an opportunity to enter into the proposed Third Amendment To Army Base Gateway Redevelopment Project Lease Disposition And Development Agreement in the form attached hereto as Exhibit A ("Third Amendment"); and

WHEREAS, after consideration, the sole Member has determined that it is in the best interest of the Company to enter into the Third Amendment; it is therefore

RESOLVED, that the sole Member hereby approves the Company's execution and delivery of the Third Amendment and any one of the following individuals are authorized to execute the Third Amendment on behalf of the Company:

Phil Tagami; or
Mark McClure.

**California Capital & Investment Group, Inc.,
a California corporation**

By: 
Name: Phillip H. Tagami
Its: CEO

**ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE MANAGER OF CCIG OAKLAND GLOBAL, LLC
a California limited liability company**

Pursuant to the provisions of the Amended & Restated Operating Agreement of CCIG Oakland Global, LLC (the "Company"), the undersigned is the Manager of the Company and has the authority to direct the Company with respect to the matters set forth herein and, pursuant to such authority, hereby consents to the following resolution effective October 21, 2015:

**THIRD AMENDMENT TO
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT**

WHEREAS, the Company has been provided an opportunity to enter into the proposed Third Amendment To Army Base Gateway Redevelopment Project Lease Disposition And Development Agreement in the form attached hereto as Exhibit A ("Third Amendment"); and

WHEREAS, after consideration, the Manager has determined that it is in the best interest of the Company to enter into the Third Amendment; it is therefore

RESOLVED, that the Manager hereby approves the Company's execution and delivery of the Third Amendment and any one of the following individuals are authorized to execute the Third Amendment on behalf of the Company:

Phil Tagami; or
Mark McClure.

**California Capital & Investment Group, Inc.,
a California corporation**

By: 
Name: Phillip H. Tagami
Its: CEO

By: 
Name: Len Epstein
Its: Secretary

10-20-15

**ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE SOLE MEMBER OF PROLOGIS MESQUITE, LLC
A Delaware limited liability company**

Pursuant to the provisions of the Operating Agreement (the "Operating Agreement") of ProLogis-Mesquite, LLC, a Delaware limited liability company (the "Company"), the undersigned constitutes the sole member (the "Member") of the Company and has the authority to direct the Company with respect to the matters set forth herein and, pursuant to such authority, hereby consents to the following resolution effective October 19, 2015:

**THIRD AMENDMENT TO
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT**

WHEREAS, the Company has been provided an opportunity to enter into the proposed Third Amendment To Army Base Gateway Redevelopment Project Lease Disposition And Development Agreement in the form attached hereto as Exhibit A ("Third Amendment"); and

WHEREAS, after consideration, the Member has determined that it is in the best interest of the Company to enter into the Third Amendment; it is therefore

RESOLVED, that the Member hereby approves the Company's execution and delivery of the Third Amendment and any one of the following individuals are authorized to execute the Third Amendment on behalf of the Company:

Mark Hansen, Managing Director; or
Jeff Major, Vice President.

Prologis, a Maryland real estate investment trust

By: 

Name: Mark Hansen

Title: Managing Director



COPY

4

February 8, 2016

Ms. Sabrina Landreth
City Administrator
City of Oakland
1 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Re: *Authorizations for the Third Amendment to LDDA and Partial Assignment Documents*

Dear Ms. Landreth:

This letter follows up on our recent conversations regarding the final forms of the proposed Third Amendment to the Army Base Gateway Redevelopment Project Lease Disposition and Development Agreement ("Third Amendment to LDDA") and the proposed Ground Lease for the West Gateway property. Effective upon (a) First American Title Company's ("Escrow Holder") notice to the City of Oakland and Oakland Bulk Oversized Terminal, LLC ("OBOT") that Escrow Holder is prepared to close escrow on the Ground Lease for the West Gateway pursuant to the joint escrow instructions submitted by the City and OBOT (the "Joint Instructions") and (b) the City's authorization to proceed with such closing, OBOT and CCIG Oakland Global, LLC hereby revoke the suspension set forth in the email delivered to the City on November 19, 2015 (copy attached) and acknowledge and agree that the execution and delivery of the Third Amendment to the LDDA shall proceed pursuant to the Joint Instructions.

Please do not hesitate to contact me with any questions.

Sincerely,

Oakland Bulk and Oversized Terminal, LLC

A handwritten signature in black ink, appearing to be "P. Tagami", written over a horizontal line.

Phil Tagami

CCIG Oakland Global, LLC

A handwritten signature in black ink, appearing to be "P. Tagami", written over a horizontal line.

Phil Tagami

Enclosure

Marc Stice

Subject: FW: Immediate suspension of authorization to enter into the Third Amendment

From: Phil Tagami

Sent: Thursday, November 19, 2015 5:34 PM

To: Cole, Doug <DCole@oaklandnet.com>; Pat Cashman (ptrckcshmn@gmail.com) <ptrckcshmn@gmail.com>; elizabeth.lake@hklaw.com; David Preiss (david.preiss@hklaw.com) <david.preiss@hklaw.com>; Monetta, John <JMonetta@oaklandnet.com>; Millner, Dianne <DMillner@oaklandcityattorney.org>

Cc: Mark McClure <mmcclure@californiagroup.com>; Claudia Cappio <ccappio@oaklandnet.com>; Major, Jeff (jmajor@prologis.com) <jmajor@prologis.com>; mhansen@prologis.com

Subject: Immediate suspension of authorization to enter into the Third Amendment

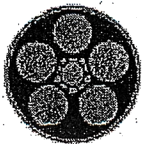
Pat, Doug, and Claudia,

Given the City's position that it will not honor the agreement in principal regarding the language for Section 13 of the draft Third Amendment and Section 5.2.1 of the draft WGW Ground Lease, OBOT and CCIGOG are suspending their authorization to enter into the Third Amendment as currently drafted until such time as the parties can work through this matter.

Please do not hesitate to call with any questions.

Respectfully,

P. Tagami



CALIFORNIA
CAPITAL & INVESTMENT
GROUP

Phil Tagami
CEO & President
tagami@californiagroup.com
510.463.6343

CALIFORNIA CAPITAL & INVESTMENT GROUP
The Rotunda Building
300 Frank Ogawa Plaza, Suite 340 | Oakland, CA 94612
Office 510.268.8500 | Facsimile 510.225.3954

Brokerage | Development | Management | Investments | Advisory

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