

FIRST AMENDMENT TO BILLBOARD FRANCHISE & LEASE AGREEMENT

This First Amendment to Billboard Franchise and Lease Agreement (this “First Amendment”) is entered into on _____, 2020, by and between the City of Oakland, a California municipal corporation (“City”), on the one hand, and Prologis CCIG Oakland Global, LLC (“Tenant”) on the other. City is also referred to herein as “Landlord”. Landlord and Tenant are sometimes individually referred to herein as “Party”, collectively as the “Parties”.

RECITALS

- A. The Redevelopment Agency of the City of Oakland (“Redevelopment Agency”) and Tenant entered into that certain Billboard Franchise and Lease Agreement, dated as of October 23, 2012, for a portion of the former Oakland Army Base defined therein as the “Premises” (the “Lease”). The Lease is incorporated herein by reference and all capitalized terms used but not defined herein shall have the meaning given to them in the Lease.
- B. The Oakland Redevelopment Successor Agency (“ORSA”) became the successor-in-interest to the Redevelopment Agency and, subsequently, 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. 2013-295093, ORSA transferred Parcel E to the City along with all of its rights and obligations relating to the former Oakland Army Base including the Lease and the Premises.
- C. Pursuant to Section 1.7 of the Lease, the Tenant and Foster Media entered into that certain Billboard Sublease Agreement, dated October 23, 2012 (the “Foster Sublease”).
- D. The Parties disagree on the methodology for calculating Percentage Rent due to the City under Section 5.2(a) of the Lease. The dispute has arisen due to varying language and interpretations of said language between the Lease and the Foster Sublease (the “Percentage Rent Dispute”).
- E. The Parties have negotiated a resolution to the Percentage Rent Dispute, and concurrently herewith, have entered into that certain OAB Billboard Settlement Agreement, attached hereto and incorporated herein as Exhibit C (the “Settlement Agreement”).
- F. To effectuate the terms of the Settlement Agreement, the Parties are entering into this First Amendment that amends certain provisions of the Lease as further set forth below, and the Tenant and the successor-in-interest to the Foster Sublease, Outfront Media, are entering into an amendment to the Foster Sublease concurrently herewith.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as amend the Lease as follows:

- 1. Defined Terms. Any capitalized term used in this First Amendment but not defined in this First Amendment shall have the meaning given that term in the Lease.

2. Revisions to Existing Language. Where this First Amendment shows changes to the existing language of the Lease, new text is indicated in double underline and deleted text is indicated in ~~strikeout~~.

3. Percentage Rent. The Parties acknowledge and agree that the Percentage Rent Dispute exists because the Parties proposed two different methods for calculating the Percentage Rent payments due to the City pursuant to Section 5.2(a).

(a) The first method is arrived at by (i) subtracting the Minimum Annual Guarantee from the Net Advertising Revenue and then (ii) multiplying the resultant amount of (i) by 75% and then (iii) adding the resultant amount of (ii) or zero to the Minimum Annual Guarantee to arrive at the portion owed to the City pursuant to Section 5.2(a) (“Method 1”).

(b) The second method is arrived at by (iv) multiplying the Net Advertising Revenue by 75%, and then (v) netting the resultant amount of (iv) against the Minimum Annual Guarantee, and then taking the (vi) greater of the resultant amount of (v) or zero and adding the resultant amount of (vi) to the Minimum Annual Guarantee to arrive at the portion owed to the City pursuant to Section 5.2(a) (“Method 2”).

(c) To resolve the Percentage Rent Dispute, the Parties agree that the following language is added to Section 5.2 of the Lease as a new subparagraph (h):

(h) Notwithstanding anything to the contrary stated in this Agreement or the Foster Sublease, Tenant shall pay to Landlord each quarterly installment of the Percentage Rent required by Section 5.2(a) in an amount equal to the greater of the (i) the average of the resultant amounts calculated pursuant to Method 1 and Method 2 or (ii) zero, as more fully set forth below:

(1) METHOD 1: Calculate the Percentage Rent using the following steps:

<u>STEP 1:</u>	<u>Identify the Gross Advertising Revenue</u>
<u>STEP 2:</u>	<u>Identify the Net Advertising Revenue</u>
<u>STEP 3:</u>	<u>Identify the Minimum Annual Guarantee Payment</u>
<u>STEP 4:</u>	<u>Subtract the Minimum Annual Guarantee Payment from the Net Advertising Revenue</u>
<u>STEP 5:</u> <u>(“M1S5”)</u>	<u>Calculate Tenant’s portion of Percentage Rent as the greater of (a) Twenty-Five Percent (25%) of the amount calculated in STEP 4, or (b) zero</u>

<u>STEP 6:</u> <u>("M1S6")</u>	<u>Calculate the City's portion of Percentage Rent as the greater of (a) Seventy-Five Percent (75%) of the amount calculated in STEP 4, or (b) zero</u>
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(2) METHOD 2: Calculate the Percentage Rent using the following steps:

<u>STEP 1:</u>	<u>Identify the Gross Advertising Revenue</u>
<u>STEP 2:</u>	<u>Identify the Net Advertising Revenue</u>
<u>STEP 3:</u>	<u>Identify the Minimum Annual Guarantee Payment</u>
<u>STEP 4:</u>	<u>Subtract the Minimum Annual Guarantee Payment from the Net Advertising Revenue</u>
<u>STEP 5:</u> <u>("M2S5")</u>	<u>Calculate Tenant's portion of Percentage Rent as the greater of (a) the lesser of (i) Twenty-Five Percent (25%) of Net Advertising Revenue, or (ii) the amount calculated in STEP 4; or (b) zero</u>
<u>STEP 6:</u> <u>("M2S6")</u>	<u>Calculate the City's portion of Percentage Rent as the greater of (a) Seventy-Five Percent (75%) of the Net Advertising Revenue less the Minimum Annual Guarantee Payment, or (b) zero</u>

(3) FINAL CALCULATION (STEP 7):

- (i) Calculate Percentage Rent payable to Tenant: An amount equal to the resultant calculation from METHOD 1, Step 5 plus the resultant calculation from METHOD 2, Step 5 then dividing that number by 2 [stated formulaically: (M1S5 + M2S5)/2].
- (ii) Calculate Percentage Rent payable to the City: An amount equal to the resultant calculation from METHOD 1, Step 6 plus the resultant calculation from METHOD 2, Step 6 then dividing that number by 2 [stated formulaically: (M1S6 + M2S6)/2].

For clarity, a spreadsheet denoting the steps of calculation and setting forth examples of how Percentage Rent is to be calculated is attached hereto as Exhibit A and the formulae for such

calculations is attached hereto as Exhibit B. Step 7 in the attached spreadsheet represents only the Percentage Rent due under Section 5.2(a), and the full payment due to the City under Section 5.2 consists of the SUM of the: MAG, Percentage Rent as calculated above for purposes of Section 5.2(a), and all such other amounts due under Sections 5.2(b) and (c).

6. Effective Date. The Parties agree that the calculations set forth in Section 3(c) shall be implemented and made effective commencing October 1, 2020.

7. Effect of Amendment. In the event of a conflict between the terms of the Lease, Settlement Agreement and/or the terms of this First Amendment, the terms of this First Amendment shall govern. Except as specifically amended hereby, all terms and conditions of the Lease shall remain unmodified and in full force and effect.

8. Governing Law; Counterparts. This First Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of California. This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile (or PDF) signatures to this First Amendment shall count the same as originals.

[Signatures on next page]

Sublandlord and Subtenant have executed this First Amendment as of the date first set forth above and this First Amendment shall be effective when countersigned by the City.

LANDLORD:

TENANT:

CITY OF OAKLAND, a municipal corporation

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

By: _____
Its: _____

By: _____
Its: _____

Approved as to form and legality:

Office of the City Attorney

Date: _____

Exhibit A

[See Attached]

Exhibit B

[See Attached]

Exhibit C

[See Attached]