

FIRST AMENDMENT TO TIDELANDS AND MARINA LEASE

This FIRST AMENDMENT TO TIDELANDS AND MARINA LEASE (this “**Amendment**”) is entered into as of _____, 20__, by and between the CITY OF ALAMEDA, a California municipal corporation (“**Landlord**” or “**City**”), and ALAMEDA MARINA, LLC, a California limited liability company, as successor-in-interest to Pacific Shops, Inc., a California corporation (“**Tenant**”).

RECITALS:

A. Landlord and Tenant entered into that certain Tidelands and Marina Lease dated as of May 16, 2012, as evidenced by a Memorandum of Lease recorded on July 19, 2012, as Document No. 2012231378 in the Official Records of Alameda County (“**Official Records**”), and as assigned and assumed by that certain Assignment and Assumption of Lease by and between Pacific Shops, Inc., a California corporation, and Tenant dated March 18, 2015, and recorded on March 18, 2015, as Document No. 2015073018 in the Official Records (collectively, the “**Lease**”), with respect to those certain premises located in the City of Alameda, County of Alameda, State of California, consisting of all of the dry and submerged land described in Exhibit A attached to the Lease (the “**Property**”), which constitutes a portion of the “Alameda Marina.” All capitalized terms used herein without definition shall have the respective meanings given to them in the Lease.

B. The Initial Term of the Lease is scheduled to expire on May 15, 2037.

C. Landlord and Tenant desire to extend the term of the Lease on the terms and provisions set forth in the Lease and hereinafter.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Master Plan. The phrase “development plan for the Development Project” and “development plan” in the Lease are hereby amended by substituting “Master Plan” in each place in which such phrase appears.

2. Section 1.3(a). Section 1.3(a) of the Lease is hereby amended and restated in its entirety as follows:

Redevelopment Timing. Prior to the end of Lease Year 1 (defined in Section 1.5(a)), Tenant, at its expense, shall retain a land use planning/consulting firm to prepare one or more proposed development plans setting forth Tenant's proposal for demolition and/or replacement and/or comprehensive rehabilitation of existing improvements on the Property and Fee Property and construction of a new higher-value project (“**Development Project**”) thereon. Tenant shall keep Landlord apprised of the status of such development plan(s) by submitting to Landlord at least annually a summary of Tenant's efforts and progress with respect thereto and shall coordinate with Landlord's planning staff in the preparation of such plan(s). Prior to the end of Lease Year 5, Tenant shall complete such

planning efforts and submit to City a complete Master Plan application setting forth Tenant's Development Project proposal. Tenant shall use diligent, commercially reasonable efforts to obtain on or before the end of Lease Year 8, City's final approval of the proposed Master Plan (the "**Master Plan Approval Condition**") and financing for the first phase comprising a substantial portion of the Development Project (the "**Financing Condition**"). Tenant agrees that the time periods set forth in this Section 1.3 shall not be extended regardless of adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding for the Development Project. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Commencement Date. As of the date of this Amendment, Landlord acknowledges that Tenant has satisfied the Master Plan Approval Condition. Notwithstanding the foregoing, if Tenant fails to comply with the Financing Condition by the end of Lease Year 8, Landlord shall have the right to revoke Tenant's Option Notice by providing written notice to Tenant, and this Lease shall expire on the expiration of the Initial Term.

3. Section 1.5(b)(2). Section 1.5(b)(2) of the Lease is hereby amended and restated in its entirety as follows:

Tenant shall have obtained final City approval of the Master Plan for the Development Project within the time set forth in Section 1.3(a); and

4. Section 23.4. Section 23.4 is hereby added to the Lease as follows:

Land Use Entitlements. Tenant hereby covenants to obtain all other permits, approvals and land use entitlements required by all governmental agencies exercising jurisdiction over the Development Project (collectively, the "**Regulatory Permits**") on or before the end of Lease Year ~~10~~ (for avoidance of doubt, the end of Lease Year 9 is December 31, 2020) (the "**Regulatory Permits Deadline**"). If Tenant fails to obtain the Regulatory Permits by the end of Lease Year ~~10~~ (subject to any extension of Tenant's performance due to a period of delay caused by a Force Majeure event as provided in Section 25.21), Landlord shall have the right to revoke Tenant's Option Notice by providing written notice to Tenant, and this Lease shall expire on the expiration of the Initial Term. Notwithstanding the foregoing, Tenant may request in writing from Landlord a six (6) month extension of the Regulatory Permits Deadline, which may be granted by Landlord in the sole discretion of the City Manager.

5. Section 23.5. Section 23.5 is hereby added to the Lease as follows:

Electrification. Tenant hereby agrees that it shall (a) develop and construct the townhome portion (i.e., 182 units or 23.9% of the Master Plan) of its Development Project as a 100% electric development, (b) develop and construct the multi-family unit portion of its Development Project such that it includes all electric appliances in the residential units, (c) install and cause to be operational 44 EV ready charging stations (i.e, 10 in excess of the 2020 California Building Code requirements), with 22 being installed in the surface

parking lots north of the Wrap A building during Phase IA of the Master Plan no later than the date Tenant obtains its first certificate of occupancy for a residential unit, and (d) 22 being installed in the surface parking lots during the remaining phases of the Master Plan.

6. Section 23.6. Section 23.6 is hereby added to the Lease as follows:

Boatyard. As of the date of this Amendment, the City acknowledges that (a) the Master Plan contemplates a boatyard/dockyard on the Property and outlines a process for identifying a boatyard and/or dockyard operator, and (b) no viable boatyard and/or dockyard operator has been identified despite Tenant's and Landlord's commercially reasonable efforts to do so. Tenant hereby agrees that it shall extend the process for identifying a boatyard and/or dockyard operator until May 1, 2020; provided that if Tenant's commercially reasonable efforts do not result in identifying a qualified boatyard and/or dockyard operator by May 1, 2020, Tenant and Landlord shall jointly report to the City Council pursuant to the Master Plan with recommendations on how to develop the maritime and commercial core of the Development Project consistent with the Master Plan. It is expressly understood that Tenant's failure to identify a qualified boatyard and/or dockyard operator pursuant to the Master Plan shall not constitute a Tenant Default under this Lease.

7. Extension of Lease Term. Subject to the revocation rights of Landlord described herein, the Term of the Lease is hereby extended for one additional period of forty-one (41) years from the date of the expiration of the Initial Term, through and including May 15, 2078 (the "**Extended Term**"), on all of the terms and conditions set forth in the Lease.

8. Agents and Brokers. Each party represents and warrants that it has not dealt with any agent or broker in connection with this Amendment. If either party's representation or warranty proves to be untrue, such party will indemnify, hold harmless and defend the other party from and against any and all resulting liabilities, costs, claims, damages, obligations, losses, penalties, actions, causes of action, judgments, suits, demands and expenses of any kind or nature (including, without limitation, reasonable attorney's fees and costs).

9. No Other Modification. Except as set forth in this Amendment, the Lease shall remain in full force and effect with no other modifications.

10. Execution in Counterparts. This Amendment may be executed in several counterparts and all such executed counterparts shall constitute one lease, binding on all of the parties hereto notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

[Remainder of page intentionally left blank; signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Name: Lisa Nelson Maxwell
Title: Assistant City Attorney

ATTEST:

By: _____
Name: _____
Title: City Clerk

LANDLORD:

CITY OF ALAMEDA,
a California municipal corporation

By: _____
Name: Eric J. Levitt
Title: City Manager

[Signatures continue on following page.]

TENANT:

ALAMEDA MARINA, LLC
a California limited liability company

By: _____
Name: Bill R. Poland
Title: Its Manager

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