

**CONSOLIDATED RAIL CORPORATION
LICENSE AGREEMENT FOR PRIVATE GRADE CROSSING**

THIS LICENSE ("License"), dated January 12, 2023, between **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania Corporation ("Conrail") and **DUKE REALTY BAYONNE DEVELOPMENT, LLC**, a New Jersey limited liability company ("Licensee").

WITNESSETH:

WHEREAS, Licensee uses a private grade crossing across Conrail's property as described below; and

WHEREAS, the private grade crossing is to be upgraded with a new crossing surface and automated warning devices as described below; and

WHEREAS, the parties have reached accord concerning the terms and conditions of the upgrading of the private grade crossing and Licensee's use thereof and desire to reduce them to writing.

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

1. CROSSING

(a) Conrail hereby grants to Licensee, insofar as it has the legal right to, and its present title permits, a license to use and maintain a private vehicular crossing at grade over the right-of-way and track of Conrail's Constable Hook Industrial Track, Line Code 10-0228, at Mile Post 1.02, located at a point in the City of Bayonne, County of Hudson, State of New Jersey, at latitude 40.656343, longitude -74.102993, including any appurtenances thereto, as generally shown on the Hammer Land Engineering plan dated November 11, 2021 and attached hereto as "Exhibit A" (hereinafter collectively referred to as the "Crossing").

(b) The Crossing shall be a private one, and Licensee shall not permit it to be used except by Licensee, its officers, employees, agents, tenants, subtenants and other persons having business or visiting with Licensee or Licensee's tenants. No lease, assignment of any type, or transfer or conveyance of any real property interest, is intended by this License.

2. CONSIDERATION FEE

(a) Licensee shall pay to Conrail upon execution of this License the sum of \$8,650.00 annually, in advance, as reimbursement for the rights granted by this License and for Conrail's performance of routine maintenance and repairs to the Crossing, along with testing and record

keeping related to the automated warning devices, as described in Section 4(a) hereof (the "Annual Maintenance Charge"). Following the initial installment of the Annual Maintenance Charge which shall be paid upon execution and delivery of this License, the Annual Maintenance Charge shall be paid to the address for Conrail provided in Section 16 of this License on or before the first business day of the calendar month of April of each succeeding year.

(b) The Annual Maintenance Charge shall be adjusted on an annual basis, commencing one year from the date of this Agreement, and every anniversary thereof, by the same percentage increase as is reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)(1982-84=100)" specified for "All Items-United States" compiled by the Bureau of Labor Statistics of the United States Department of Labor (the "Index"). Each yearly adjustment shall be made by determining the percentage change between the price index for the fourth month immediately preceding the effective date of each adjustment (the "Current Price Index") and the price index for the same calendar month for the preceding year (the "Prior Year Index"). Such percentage change shall be computed by: (1) obtaining the difference between the Current Price Index and the Prior Year Index, and (2) dividing such difference by the Prior Year Index. The percentage thus determined shall be multiplied by the current Annual Maintenance Charge, and the product thus determined shall represent the adjusted Annual Maintenance Charge until a subsequent adjustment is made under this Section. In no event, however, shall the adjusted Annual Maintenance Charge be less than the current applicable Annual Maintenance Fee. In the event the Index shall be converted to a different standard reference base, or otherwise be revised, the determination of the percentage change shall be made with the use of such conversion factor, formula or table converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau does not publish same, then as shall be reasonably determined by Conrail.

3. CONSTRUCTION

(a) All materials and work contemplated by this License shall be furnished and performed by Conrail (except as otherwise specifically set forth in this License) at the sole cost and expense of Licensee and billed to Licensee in accordance with the terms of Section 8 hereof.

(b) Licensee, subject to the prior approval of Conrail's Chief Engineer or his designee, shall install, repair and maintain all asphalt material, together with all approach work, at its sole risk, cost and expense.

(c) Licensee, before performing any work set forth in this License, shall give Conrail's Chief Engineer, or his designee, at least fourteen (14) days' prior notice.

(d) The Crossing shall also include adequate drainage facilities necessary or appropriate for the prevention of ponding and/or flooding or any other kind of water damage in the general area where the Crossing is located. Said drainage facilities shall be installed by, repaired, maintained and cleaned by Licensee at the sole risk, cost and expense of Licensee.

(e) In the event Conrail determines the Crossing requires additional upgrading, reconstruction, renewal or adjustment due to the anticipated use of the Crossing by Licensee, then all materials and work contemplated by the upgrading, reconstruction, renewal or adjustment shall be furnished and performed by Conrail (except as otherwise specifically set forth in this License)

at the sole cost and expense of Licensee and billed to Licensee in accordance with the terms of Section 8 hereof.

(f) The upgrading of the Crossing includes certain track work, the installation of a new crossing surface and the installation of automated crossing protection, all by Conrail (or its contractor(s)) at the sole cost and expense of Licensee. Conrail's estimated cost for this work of \$933,315.75 is detailed in the Force Account Estimate attached hereto as "Exhibit B." Licensee shall submit an advance deposit in this amount prior to the commencement of any construction activity. Conrail, in accordance with the terms of Section 8 hereof, shall bill Licensee any amounts incurred in the construction of the Crossing that exceed the advance deposit, provided, however, Conrail shall not incur costs in excess of \$1,000,000 in the aggregate without Licensee's prior written consent. In the event final, actual construction costs are less than the advance deposit, Conrail shall refund the difference to Licensee.

4. MAINTENANCE

(a) Conrail shall perform all non-routine maintenance and repairs to the Crossing and thereafter bill Licensee in accordance with the terms of Section 8 hereof. Non-Routine maintenance and repairs include repairs to the crossing surface caused by storm damage and vehicle accidents. Except as provided in Sections 4(b) and 4(c) hereof, Conrail, at its sole cost and expense, shall perform routine maintenance and repairs to the Crossing as well as comply with mandated signal testing and record keeping requirements.

(b) Subject to the prior approval of Conrail's Chief Engineer or his designee, Licensee shall maintain and repair all asphalt material, together with all approach work, at its sole cost and expense.

(c) Licensee shall at all times keep the Crossing and the flangeways in the Crossing free and clear of ice, snow and debris and shall in any event promptly, upon written notice from Conrail, perform the above work, or Conrail, for the purpose of protecting and safeguarding its property, traffic, employees or patrons, may at any time, with or without prior notice to Licensee, remove any ice, snow and debris from the Crossing and the flangeways in the Crossing and thereafter bill Licensee in accordance with the terms of Section 8 hereof for all reasonable costs and expenses incurred by Conrail. Licensee, when performing any work at the Crossing, shall be responsible for ensuring that people, equipment and materials are kept a safe distance away from the tracks upon the approach of any moving equipment on the tracks.

5. MAINTENANCE OF CONRAIL RIGHT-OF-WAY

In the event Conrail is required, or may desire at any time, or from time to time, to change the grade or location of any of its tracks or facilities, or to remove, construct or add to any of its tracks or facilities upon land owned or used by Conrail, then Conrail shall, at the sole cost and expense of Licensee, make such adjustments to, or relocations of, the Crossing and Licensee's facilities which may, in the opinion of Conrail, be necessary and bill Licensee for such costs and expenses in accordance with the terms of Section 8 hereof. In the event any of the work provided for in this Section 5 requires the adjustment or relocation of any facilities of Licensee not located on Conrail property, then Licensee shall, at its sole cost and expense, promptly make all required

adjustments to, and relocations of, its facilities so affected; provided, however, in all events, any such relocation of the Crossing and/or Licensee's facilities related to the Crossing shall be subject to Licensee's commercially reasonable approval, with regard to the new location of the Crossing and/or facilities, pursuant to the terms and conditions of this License.

6. CONRAIL'S PARAMOUNT USE

Conrail shall have the paramount right at all times to use its track(s), right-of-way and property at the Crossing. Licensee shall exercise commercially reasonable care in the use of the Crossing and shall require all others permitted hereunder to use the Crossing to also exercise commercially reasonable care in the use of the Crossing.

7. CROSSING WARNING DEVICES

(a) Conrail shall have no responsibility for protecting the Crossing from the standpoint of safety, and policing the Crossing.

(b) Licensee shall erect, maintain and renew Stop Signs, together with appropriate signs or notices, satisfactory to Conrail, setting forth the fact that the Crossing is private and shall take whatever further steps as may be necessary to prevent unauthorized persons from entering upon or using the Crossing for any purpose whatsoever.

(c) Conrail may at any time install, maintain and renew railroad-highway grade crossing signs ("Crossbucks"), and Licensee shall pay all reasonable costs and expenses of the installation, maintenance and renewal thereof in accordance with the terms of Section 8 hereof.

(d) Licensee shall, at its sole cost and expense, erect, maintain, repair and renew appropriate lock-type gates on both sides of the Crossing reasonably satisfactory to Conrail, which shall be suitably situated and kept closed and locked at all times when the Crossing is not in actual use.

(e) The upgrading of the Crossing includes the installation of automated warning devices. If it is deemed necessary by Conrail, or any federal, state or municipal authority, or other governing body having authority over the Crossing, to modify, augment, or add to the existing automated warning devices at the Crossing, said automated warning devices shall be modified, augmented, added to and ultimately removed, by Conrail at the sole cost and expense of Licensee.

(f) In addition to the foregoing, but not in limitation thereof, if at any time Conrail should deem crossing flagmen or watchmen desirable or necessary to properly protect its operation near the Crossing, Conrail may place flagmen or watchmen at the Crossing and bill Licensee in accordance with the terms of Section 8 hereof for all reasonable costs and expenses incurred in placing such flagmen or watchmen. The furnishing or failure to furnish flagmen or watchmen by Conrail shall not release Licensee from any liabilities assumed by Licensee under the terms of this License.

8. BILLING

All reasonable costs and expenses in connection with the construction, adjustment, alteration, relocation and removal of the Crossing shall be borne by Licensee, and in the event of work being performed or material furnished by Conrail under the stipulated right to perform such work of construction, adjustment, alteration, relocation or removal under any section hereof, Licensee shall pay Conrail the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related material management expenses and the actual cost of labor plus the current applicable overhead percentages as developed and published by the Accounting Department of Conrail for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance, and other insurance, taxes and all other indirect expenses. The aforementioned material and labor overhead charges shall be applied at rates which are effective at the time of the performance of any work by Conrail on the Crossing. Licensee shall pay all bills rendered pursuant to this License within thirty (30) days after presentation by Conrail of a written invoice together with such other documentation reasonably demonstrating the costs and expenses incurred.

9. TAXES

Licensee shall assume and pay any and all taxes and assessments which may be levied upon the facilities afforded the Licensee under this License, and Licensee shall indemnify, defend and hold Conrail harmless therefrom.

10. LIABILITY

Licensee hereby releases and will protect, defend, indemnify and save harmless Conrail from and against all claims, liabilities, demands, actions at law and equity (including without limitation claims and actions under the Federal Employers' Liability Act), judgments, settlements, losses, damages, and expenses of every character whatsoever (hereinafter collectively referred to as "Claims") for injury to or death of any person or persons whomsoever and for damage to or loss or destruction of property of any kind by whomsoever to the extent owned, caused by, resulting from, arising out of, or occurring in connection with the construction, maintenance, alteration, repair, relocation, renewal, removal, use or presence of the Crossing, or incidental to or appertaining thereto; provided, however, the foregoing indemnity shall not be applicable to the extent the Claims are owned, caused by, resulting from, arising out of, or occurring in connection with the gross negligence or willful misconduct of Conrail and/or its agents, contractors or employees.

11. INSURANCE

(a) In addition to any other forms of insurance or bonds required under the terms of any contract or specifications and except to the extent that any of the requirements of this section are expressly waived or revised in writing by Conrail, Licensee, at its own cost and expense, shall maintain insurance of the following kinds and amounts and deliver to Conrail satisfactory evidence of such insurance as indicated herein:

(1) Commercial General Liability Insurance, including contractual liability, personal and advertising injury insurance with a per occurrence limit of not less than \$5,000,000

and \$10,000,000 in the aggregate for all losses including but not limited to damages, bodily injury, death, property damage and legal fees in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Coverage must be purchased on an ISO occurrence Form or the equivalent. If the required minimum limits can only be met when applying an umbrella/excess liability policy, the umbrella/excess liability policy must follow form of the underlying policy and be endorsed to “drop down” to become primary in the event the primary limits are exhausted. Conrail shall be named as an additional insured under this insurance. Exclusion of work within fifty feet (50’) of railroad right of way shall be deleted (Endorsement CG2417). The policy shall contain a waiver of subrogation in favor of Conrail. The definition of bodily injury should include mental anguish. A per project aggregate limit must be included. Coverage should be primary and non-contributory in favor of Conrail.

(2) Automobile Liability Insurance with a limit of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence. Conrail shall be named as an additional insured under this insurance. Exclusion of work within fifty feet (50’) of railroad right of way shall be deleted (Endorsement CA2070). The policy shall contain a waiver of subrogation in favor of Conrail. Coverage should apply to any and all motor vehicles owned, non-owned, used or hired must be covered and mobile equipment must be covered to the extent it may be excluded from the general liability insurance. Coverage should be primary and non-contributory in favor of Conrail.

(3) Workers’ Compensation/Employers’ Liability and Occupational Disease Insurance with Limits of \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 each employee. The policy shall include a waiver of subrogation in favor of Conrail (if allowable by the law of the state in which the Crossing is located).

(4) Pollution Liability Insurance with Limits of not less than \$5,000,000 per occurrence/\$5,000,000 aggregate bodily injury, property damage and cleanup expenses resulting from pollution conditions. Conrail shall be named as an additional insured under this insurance.

(b) The above-indicated insurance coverage shall be carried for the term of this License and shall be effected under standard form policies issued by insurers of financial responsibility that are rated “A” or better by Best’s Insurance Reports, “AA” or better by Standard & Poor’s Insurance Rating Service and “Aa” or better by Moody’s Investors Service. Conrail reserves the right to reject as inadequate any insurance coverage provided by an insurance company that is rated less than the ratings above by any of the aforementioned rating services. The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this License, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the project and when the insurance was in force. Licensee shall furnish Conrail with certificates of insurance evidencing the insurance coverages in Sections 11(a)(1)-(4) annually. All hazards to be covered shall include the so-called “XCU” coverage for explosion, collapse, and damage where work is to be done over or under Conrail property. Policies shall not contain any punitive damages exclusion. All insurance policies shall be endorsed to provide that the insurance company shall endeavor to give thirty (30) days’ prior written notice to Conrail if the policies are to be terminated or if any changes are to be made which shall in any way affect the insurance requirements of the Crossing. Certificates and policies should be sent to zz-insurance-certificates@conrail.com.

(c) All policies except workers compensation must contain a separation of insureds provision. Separation of insureds must be indicated on the certificate of insurance.

(d) Licensee may not self-insure without Conrail's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If Conrail grants such consent, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Licensee in lieu of insurance. Any and all Conrail liabilities that would otherwise in accordance with the provisions of the Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

(e) The fact that insurance (including without limitation, self-insurance) is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of the agreement. Damages recoverable by Conrail will not be limited by the amount of the required insurance.

(f) Certificates shall show the location of the Crossing.

12. EFFECTIVE DATE, DEFAULT AND TERMINATION

(a) This License shall become and be effective as of the day and year first above written and shall continue for a term of thirty (30) years unless otherwise terminated pursuant to the terms herein. Subsequent to the termination of this License as set forth above, Conrail may remove the Crossing, in, upon or over its right-of-way or property and track, at the sole cost and expense of Licensee, which shall make payment to Conrail in accordance with the terms of Section 8 hereof; or Conrail may wreck and scrap or convert all of the Crossing, to its own use without liability to Licensee in any event for compensation or damages therefor.

(b) Licensee shall be in default hereunder if it shall take any action inconsistent with or fail to perform, as and when required, any obligation hereunder and such failure remains uncured for forty-five (45) days after Licensee is given notice of such failure; provided that if any such failure cannot reasonably be remedied by Licensee within such forty-five (45) day period, then so long as Licensee is continuously and diligently pursuing the remedy necessary to cure such failure, Licensee shall have such additional time as shall be reasonably necessary to remedy such failure. The foregoing cure period shall not apply in the event of an emergency situation that would endanger the safety or interfere with Conrail's operation of the track at the Crossing, as deemed by Conrail in its sole judgment, in which such event, only such notice and opportunity to cure as is reasonable under the circumstances (if any) shall be given. Upon written demand by Conrail, Licensee agrees to immediately cease all objectionable activities within the Crossing until such time as the default is cured and Licensee's actions or omissions no longer endanger the safety or interfere with the operations of Conrail. If Licensee shall be in default hereunder, Conrail may, but in no event shall be obligated to, perform any obligation of Licensee and in such event, Licensee shall pay to Conrail, within thirty (30) days after written demand, all reasonable costs and expenses incurred by Conrail in effecting such cure. If and only if the default by Licensee beyond all applicable cure periods would endanger the safety or interfere with Conrail's operation of the track at the Crossing, then Conrail may terminate this License by written notice not to exceed ninety (90) days to Licensee.

13. PERMITS AND APPROVALS

Licensee, at its sole risk, cost and expense, shall obtain all permits and approvals which may be necessary or appropriate and Licensee shall comply with all federal, state and local laws, and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of Conrail.

14. SUCCESSORS

(a) This License shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, successors and assigns, subject, however, to the terms of Section 14(b) hereof.

(b) The permission and license hereby afforded shall be the personal privilege of Licensee, and no assignment or transfer thereof by operation of law or voluntary act of Licensee shall be made, or other use of the Crossing be permitted than as herein provided, without the prior consent of Conrail, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Licensee shall not be required to obtain written consent of Conrail to assign this License or its rights or obligations, in whole or in part, to any successor that acquires Licensee's property adjacent to the Crossing. Furthermore, Licensee shall not be required to obtain written consent of Conrail in the event Licensee sells all or portion of the membership interests or voting shares of Licensee. Upon the completion of any such assignment under this provision, Licensee shall deliver to Conrail written notice stating the effective date of such assignment and the contact information for the assignee.

15. WAIVER

The waiver by Conrail of any breach of any term, covenant, obligation or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or a waiver of any other term, covenant, obligation or condition herein contained.

16. NOTICES

(a) Every notice, approval, consent or other communication desired or required under this License shall be effective only if the same shall be in writing and sent postage prepaid by overnight mail or United States registered or certified mail (or a similar mail service available at the time), directed to the other party at its address as follows (or such other address as either party may designate by notice given from time to time in accordance with this Section):

If to Conrail:

Consolidated Rail Corporation
330 Fellowship Road
Mt. Laurel, NJ 08054-2355
Attn: Real Estate

If to Conrail's Insurance Department

Consolidated Rail Corporation
330 Fellowship Road
Mt. Laurel, NJ 08054-2355
Attn.: Risk Management

If to Licensee:

Duke Realty Bayonne Development, LLC
Attn: Jessica Fraser

With a copy to:

c/o Prologis, L.P.
Attn: Legal Department
1800 Wazee Street, Suite 500
Denver, Colorado 80202

(b) Notwithstanding anything to the contrary set forth above, in the event Conrail is unable to locate Licensee, such notices may be posted at or near the Crossing.

17. ENTIRE AGREEMENT

The entire agreement between Conrail and Licensee is set forth in this License and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise, other than as set forth in this License. No change or modification of any of the terms, obligations or provisions hereof shall be valid unless in writing and signed by the parties hereto.

18. PARTIAL INVALIDITY

If any term, obligation or condition of this License, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent by a final judgment or award which shall not be subject to change by appeal, then the remainder of this License, or the application of such term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this License shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each agreement, obligation and other provision of this License is and shall be deemed and construed as a separate and independent obligation of the party bound by, undertaking or making the same, and not dependent on any other provision of this License unless expressly so provided.

19. THIRD PARTY BENEFICIARY

Nothing contained in this License shall be construed as to confer upon any other party the rights of a third party beneficiary.

20. GOVERNING LAW

This License and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the state in which the Crossing is located.

21. EXHIBITS AND ADDENDA

Any exhibit or addenda to this License shall be deemed a part hereof.

22. HEADINGS

Section headings are inserted for convenience only and shall not affect the construction or interpretation of this License.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this License to be duly executed and delivered as of the day and year first above written.

WITNESS:

CONSOLIDATED RAIL CORPORATION

Francine Monteleon

By: Ryan M. Hill

Name: RYAN M. HILL

Title: CHIEF ENGINEER-DESIGN & CONSTRUCTION

WITNESS:

DUKE REALTY BAYONNE

DEVELOPMENT, LLC, a New Jersey limited liability company

J. Michael D.

By: Authorized Person

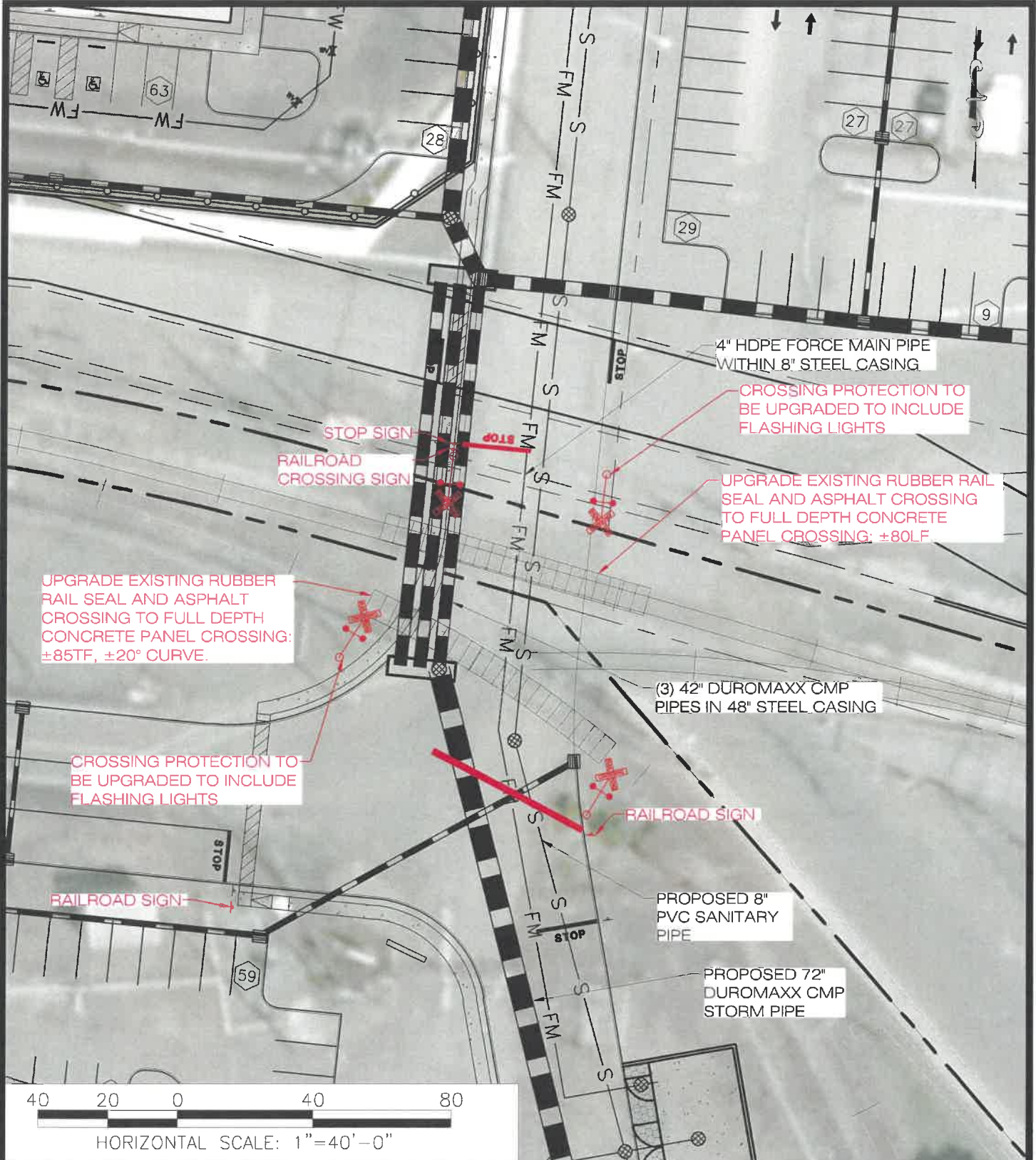
By: Jessica Fraser

Name: Jessica Fraser

Title: VP, Investment Officer
of Prologis, Inc., a Maryland corporation

EXHIBIT A

X:\20168 DUKE EXXON BAYONNE\DRAWINGS\EX-EXHIBITS\X-LAYOUT W TRACK OVERLAY.DWG 8.5X11 CROSSING UPGRADE EXHIBIT 04/17/2008 12:00 PM BERRIOS



NO.	DATE	ISSUE OR REVISION	BY

DRAWN'S NAME

CROSSING UPGRADE EXHIBIT

JOSEPH D. HANRAHAN
 PROFESSIONAL ENGINEER
 NJ LICENSE NUMBER 40339

HAMMER
 LAND ENGINEERING

1707 ATLANTIC AVENUE, SUITE B2
 MANASQUAN, NJ 08736
 (TEL) 732.899.0898 (FAX) 888.712.4519
 CERTIFICATE OF AUTHORIZATION #24GA28176300
 HAMMERENGINEERING.COM

OWNER/CLIENT:
 DUKE REALTY BAYONNE DEVELOPMENT, LLC
 HARBORSIDE PLAZA 10
 3 SECOND STREET, SUITE 502
 JERSEY CITY, NJ 07302
 484.533.6500 484.533.6505 (FX)

LOCATION:
 BLOCK 478, LOTS 1 & 1.01
 BLOCK 466, LOTS 1, 2, 3 & 4
 BLOCK 465, LOT 8
 CITY OF BAYONNE
 HUDSON COUNTY, NJ

PROJECT:		
DUKE BAYONNE		
DRAWN BY: MAB	CHECKED BY: KGF/MDS	DRAWING NUMBER: EX-01
SCALE: 1" = 40'		SHEET 1 OF 1
JOB NUMBER: 20168	DATE: 08 18 22	