

**DEVELOPMENT MANAGEMENT AGREEMENT
(Freeport Parkway Drainage Improvements)**

This **DEVELOPMENT MANAGEMENT AGREEMENT** ("Agreement") is made by and between the **City of Coppel**, a Texas home rule municipality ("City"), and **Prologis Logistics Services Incorporated**, a Delaware corporation ("Company"), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, City has a drainage easement shown in Exhibit "A" (the "Land"); and

WHEREAS, Company and City have mutually determined that it would promote their respective interests if Company completed the required drainage improvements for the Freeport Parkway extension from Sandy Lake Road to Highway 121 Frontage Road; and

WHEREAS, Company has agreed to complete the required drainage improvements as shown on Exhibit "B" attached hereto ("Channel Grading Plans") in accordance with the terms and conditions set forth herein; and

WHEREAS, City has funds through the Regional Toll Revenue Funds and Capital Improvement Projects;

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Article I
Term**

The term of this Agreement shall begin on the last date of execution hereof by both City and Company ("Effective Date") and continue until the Expiration Date, unless sooner terminated as provided herein.

**Article II
Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"City" shall mean the City of Coppel, Texas acting by and through its City Manager, or designee.

"City Engineer" shall be Teague Nall & Perkins, which has been retained by and shall be the responsibility of the City.

"Commencement of Construction" shall mean that date which is the later of (a) ten (10)

business days after Company has received all necessary permits for construction of the Project pursuant to the Grading Plans and (b) ten (10) business days after the Contract Award (defined below) and execution of the Construction Contract.

"Company" shall mean Prologis Logistics Services Incorporated, a Delaware corporation, and its permitted successors and assigns.

"Completion of Construction" shall mean that the improvements have been constructed per the plans prepared by the City Engineer and paid for by City as part of the Construction Cost.

"Construction Cost" shall mean the total costs and expenses incurred by Company for the completion of the Project, including without limitation, all costs of grading, staking, topographic and other surveying costs, equipment rentals, and other related costs and expenses, subject to adjustment as provided in Section 3.4 hereof. Construction costs shall consist of a combination of reimbursement of roadway impact fees paid for Building 3 and Building 6 of the Prologis Development in an amount of \$165,148.80 with the balance of the construction costs paid from savings on the project and Roadway Impact Escrow funds. The balance to be paid shall not exceed \$334,851.20, with the total project cost not to exceed \$500,000.

"Effective Date" shall mean the last date of execution hereof by each Party.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination of a Party's existence as an on-going business, insolvency, or appointment of a receiver for any significant part of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Expiration Date" shall mean the date that all Parties have fully satisfied their respective obligations herein.

"Force Majeure" means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorism, riot, civil commotion, insurrection, criminal acts by unrelated third parties, government or de facto governmental action or delays (unless caused by acts or omissions of the Party), adverse weather, fires, explosions, floods, strikes, slowdowns or work stoppages, provided, however, that Force Majeure shall not include a Party's inability to pay its obligations hereunder.

"Channel Grading Plans" shall mean the channel grading plans for the Land generally depicted and described on Exhibit "B" attached hereto. Such Grading Plans were prepared and approved by City prior to the date hereof.

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company.

"Land" shall mean the real property owned by City and described in Exhibit "A" attached hereto and incorporated herein by this reference.

"Material Breach" shall mean a breach of a material term or condition of this Agreement including specifically the following: (i) failure to construct the Project substantially in accordance with the Grading Plans; (ii) failure to timely cause Commencement of Construction or Completion of Construction of the Project, subject, however, to Force Majeure events; and (iii) failure of City to timely pay any or all of the Construction Cost to Company for the Company Project in accordance with the terms of this Agreement.

"Party" or "Parties" shall mean City and/or Company, individually or jointly, as applicable.

"Project" shall mean the channel grading and drainage improvements of the Land as generally depicted and described on Exhibit "B", and generally consisting of the grading of the channel and installing drop structures and channel stabilization and establish vegetation as shown in Exhibit "B".

Article III Project

3.1 Project Payment. For adequate consideration, the receipt and sufficiency of which are hereby acknowledged, Company agrees to complete the Project and City agrees to pay Company the Construction Cost not later than ten (10) business days after Completion of Construction, upon and subject to the terms, provisions and conditions hereinafter set forth in this Agreement.

3.2 Plans. City has, at its sole costs, caused the Grading Plans to be prepared for the Project. The Grading Plans have been approved prior to the Effective Date by all applicable governmental authorities with jurisdiction. Company shall have no responsibility or liability with respect to the Grading Plans' compliance with applicable laws or otherwise.

3.3 Not Used

3.4 Construction Cost. City shall pay Company the roadway impact fee reimbursement upon execution of the Developer Agreement. The balance of the Construction Cost shall be paid not later than ten (10) business days following Completion of Construction of the Project. The Construction Cost shall be evidenced by invoices received by and/or other payments made by Company for the materials supplied and for labor services performed for the various components of the Project. As a condition to City's obligation to pay the Construction Cost, City shall have received the following:

- (i) an affidavit from the General Contractor that has furnished labor and/or materials in connection with the grading work of the Project that such materials and labor and any suppliers and/or sub-contractor(s) have been paid for such work, in a form reasonably acceptable to City or such other form as is required in the State of Texas,

and;

- (ii) An assignment by Company of all warranties for the Project from the General Contractor utilized in the construction of the Project.

3.5 Construction of Project.

(a) **Commencement and Completion of Construction of Project.** Company agrees, subject to events of Force Majeure, to cause Commencement of Construction of the Project to occur on or before fifteen (15) days after the Contract Award and execution of the construction contract and, subject to weather delays constituting Force Majeure, to cause Completion of Construction of the Project to occur not later than sixty (60) calendar days thereafter.

(b) **Completion of Construction.** Company will use good faith efforts to provide at least five (5) days prior written notice to City of the date that Company reasonably expects to achieve Completion of Construction for the Project. Upon receipt of written notification from Company that Completion of Construction for the Project is achieved, City may make a walk-through inspection of the Project. At City's written request, a representative of Company and/or General Contractor will accompany the City Engineer on the walk-through inspection.

(c) **Construction Meetings.** Company agrees to meet with City representatives at least once per month (if the duration of the Project extends beyond one month) to jointly review the progress of construction of the Project and to discuss any other matters pertaining to the construction of the Project. Company will keep City reasonably informed as to the progress of the Project. Furthermore, Company will allow the City Engineer to inspect the Project at any time during business hours so long as such inspection does not materially delay the completion of the Project.

3.6 General Requirements for Design and Construction.

(a) **Compliance of Plans.** The Project shall be designed and constructed in accordance with the Grading Plans. In the event the Project is completed in accordance with the Grading Plans, Company shall have no liability for design defects because the Grading Plans have been prepared and approved by City. City shall comply with all local and state laws and regulations regarding the design of the Project. Company shall cause all necessary permits and approvals required by the City and any applicable governmental authorities to be issued for the construction of the Project. Notwithstanding the foregoing, City agrees to waive all applicable permit fees associated with the Project and associated with Company's grading of Company's Adjacent Land, as part of the consideration for Company's completion of the Project.

(b) **Compliance of Laws.** Company shall comply with all local and state laws and regulations regarding the construction of the Project. Upon Completion of Construction of the Project, Company shall provide City with a final cost summary of all

costs associated with the construction of the Project, and provide proof that all amounts owing to contractors and subcontractors have been paid in full as evidenced by the customary affidavits executed by the General Contractor.

(c) **Payment and Performance Bonds.** Prior to commencement of construction of the Project, Company shall require the General Contractor to obtain payment and performance bonds relating to the construction of the portion of the Project on the Land which bonds shall be executed with a corporate surety in accordance with Chapter 2253, Texas Government Code. The amount of such payment and performance bonds shall be equivalent to that portion of the Construction Costs related to the construction of the portion of the Project on the Land by the General Contractor and shall be on a form approved by City's City Attorney.

(d) **NCTCOG Standards.** Except as otherwise provided in this Agreement, the design by City and construction by Company of the Project, respectively, shall be in accordance with the Standard Specifications for Public Works Constructions published by the North Central Texas Council of Governments, as amended, and as modified by City, and to the extent applicable are hereby incorporated by reference.

(e) **Franchise Utilities.** Company and City acknowledge and agree there are no franchise utilities that need to be relocated or constructed as part of the Project.

3.7 Additional Agreements.

(a) **Quality of Work.** Company agrees to cause the Project to be constructed in a diligent, good and workmanlike manner, in substantial and material compliance with the Grading Plans and the work shall be performed in compliance with all applicable construction ordinances and laws.

(b) **Use of Surplus Fill.** City agrees that any cut or excess grading materials generated from the completion of the Project may be used by Company on Company's Adjacent Land without cost to Company. The Parties acknowledge and agree that Company's use of such cut or excess materials for Company's Adjacent Land shall be consideration to Company for its performance of this Agreement, in addition to the Construction Cost.

3.8 Indemnification by General Contractor. COMPANY SHALL CAUSE THE GENERAL CONTRACTOR TO INDEMNIFY, DEFEND, HOLD HARMLESS CITY AND COMPANY USING COMPANY'S STANDARD FORM OF CONSTRUCTION CONTRACT, THE FORM OF WHICH IS ATTACHED HERETO AS EXHIBIT "D". THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

3.9 Insurance. Prior to the issuance of a notice to proceed to commence any work on the Land and, thereafter, throughout the term of this Agreement, Company shall cause its General

Contractor to purchase and maintain in full force and effect, the insurance required pursuant to Company's standard form of Construction Contract.

(a) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City and Company as additional insureds as to all applicable coverage, with the exception of Workers Compensation Insurance; (2) provide for at least ten (10) days prior written notice to City for cancellation, or non-renewal; (3) provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(b) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to Commencement of Construction.

3.10 License. City shall be responsible for the acquisition of such easements and right-of-way as are necessary for the Project that are constructed off-site of the Land. City hereby grants to Company a temporary license to occupy and use the Land and such off-site areas for purposes of completing the Project.

3.11 Waiver of Fees and Charges.

(a) **Permit and Inspection Fees.** City agrees to waive all permit fees, inspection fees and similar charges and fees with respect to the Project and with respect to the grading performed by Company on Company's Adjacent Land.

**Article IV
Termination**

4.1 Manner of Termination. This Agreement may be terminated upon any one or more of the following events:

- (a) upon mutual written agreement of the parties;
- (b) upon the Expiration Date;
- (c) by either Party, if the other Party has committed a Material Breach of this Agreement and such Material Breach is not cured within sixty (60) days after written notice thereof; provided that if the Material Breach cannot reasonably be cured within a sixty (60) day period and the defaulting Party has diligently pursued such remedies as shall be reasonably necessary to cure the default, then the non-defaulting Party shall extend the period in which the default must be cured for an additional sixty (60) days; and
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency.

4.2 City Remedies. In the event this Agreement is terminated by City pursuant to Section 4.1(c) or (d), City may seek specific performance, and/or actual damages incurred as a

result of such uncured default by Company. In addition, in the event this Agreement is terminated by City pursuant to Section 4.1(c) or (d), City shall pay to Company all amounts of the Construction Cost incurred by Company prior to the date of such termination, subject, however, to a right to withhold a reasonable estimate of the costs to cure such Material Breach, until such Material Breach has been cured, at which time, City shall pay Company for any amounts of such withholding which were not incurred by City to cure the Material Breach.

4.3 Company Remedies. In the event this Agreement is terminated by Company pursuant to Section 4.1(c), Company may seek specific performance or actual damages incurred as a result of such uncured default by City.

Article V Miscellaneous

5.1 Binding Agreement; Assignment. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties. This Agreement may not be assigned by Company without the prior written consent of City's City Manager.

5.2 Limitation on Liability. Company and City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions.

5.3 No Joint Venture. This Agreement is not intended to, and shall not be deemed to create, a partnership or joint venture between the Parties.

5.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

5.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or (ii) on the day actually received if sent by courier, email or otherwise hand delivered.

If intended for City, to:
Attn: City Manager
City of Coppell, Texas
P.O. Box 9478
Coppell, Texas 75019
Email: cphillips@coppelltx.gov

With a copy to:

Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard

Dallas, Texas 75201
Email: rhager@njdhs.com

If intended for Company, to:

Prologis Logistics Services Incorporated
Attn: Jim McGill, Managing Director
6250 North River Road, Suite 1100
Rosemont, Illinois 60018
Email: jmcgill@prologis.com

With a copy to:
Prologis, L.P.
Attn: Anne LaPlace
4545 Airport Way
Denver, Colorado 80239
Email: alaplace@prologis.com

Any Party shall have the right to change its address for notice by sending notice of change of address to each other Party, in the manner described above.

5.6 Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement among the Parties that in any manner relates to the subject matter of this Agreement, except as provided or referred to in this Agreement or as provided in any Exhibits attached hereto.

5.7 Governing Law. This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.8 Amendment. This Agreement may only be amended by a written agreement executed by both Parties.

5.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.10 Recitals. The recitals to this Agreement are incorporated herein.

5.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one

and the same instrument.

5.12 Exhibits. The exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

5.13 Survival of Covenants. The covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, under this Agreement shall survive termination to the extent set forth herein.

5.14 Covenants and Representations. Company represents, warrants and covenants that it has the authority to: (i) enter into this Agreement and to execute and deliver this Agreement and (ii) perform and comply with all of the terms, covenants and conditions to be performed and complied with by Company hereunder. City represents warrants and covenants that it has the authority to: (i) enter into this Agreement and to execute and deliver this Agreement; (ii) perform and comply with all of the terms, covenants and conditions to be performed and complied with by City hereunder; and (iii) if the City Engineer approves the Contract Award, City has sufficient funds reasonably available to pay the Construction Cost.

5.15 Time for Performance. Time is of the essence in the performance of each Party's obligations hereunder.

5.16 Force Majeure. Whenever a period of time is herein prescribed for action to be taken by City or Company (other than payment of money), City or Company shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to Force Majeure.

[Signatures Appear on the Following Page]

EXECUTED in duplicate originals this the ____ day of, March, 2017.

City of Coppell, Texas

By: _____
Clay Phillips, City Manager

Attest:

Christel Pettinos, City Secretary

EXECUTED in duplicate originals this ____ day of March, 2017.

PROLOGIS LOGISTICS SERVICES INCORPORATED,
a Delaware corporation

By: _____
James McGill
Managing Director

EXHIBIT "A" DESCRIPTION OF LAND

Exhibit A

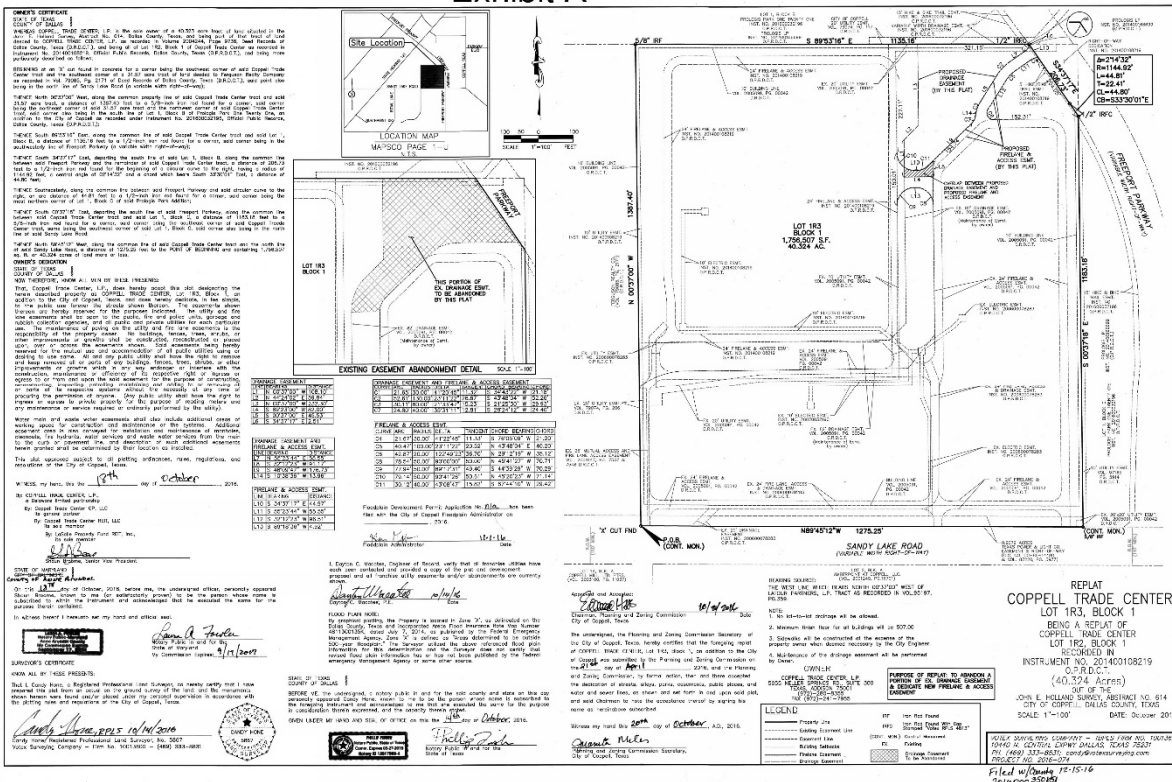


EXHIBIT "B"

DESCRIPTION OF GRADING PLANS

