

**DEVELOPMENT MITIGATION AGREEMENT  
BETWEEN THE CITY OF TACOMA AND PROLOGIS, INC.**

THIS DEVELOPMENT MITIGATION AGREEMENT ("Agreement") is dated this 24<sup>th</sup> day of August, 2017 (the "Effective Date"), between the City of Tacoma (the "City"), a Washington municipal corporation, and Prologis, L.P., (the "Developer") (hereinafter collectively referred to as "Parties") and is made pursuant to the following recitals and the terms and conditions herein.

**RECITALS**

A. Developer is constructing a major new logistics center (the "Project") within the Port of Tacoma area of the City.

B. The SEPA analysis for the Project, dated April 29, 2016, resulted in a Mitigated Determination of Non-Significance ("MDNS") which specified a number of mitigations measures to be taken by the Developer.

C. Among the required mitigation measures are two related to traffic impacts on City streets, listed in the MDNS as conditions 29, and 30.

D. State law allows the Developer and the City to enter into a voluntary agreement under which the Developer will pay the City to implement the necessary mitigation.

E. The Developer and the City concur that this agreement is the most efficient way to implement conditions 29 and 30 of the MDNS.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the implementation of the mitigation, and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.

2. Scope of Agreement. This Agreement addresses only MDNS Conditions 29 and 30, the Developer's obligation to mitigate any additional impacts identified in the MDNS, or by City code are unaffected by this Agreement.

3. Mitigation.

3.1 Signal Timing. MDNS Condition 29 provides that "The applicant shall provide updated signal timing sheets to the City of Tacoma to assist in the optimization of the north and south intersections of Alexander Ave E and SR 509. The applicant shall be responsible for paying any associated City of Tacoma right-of-way work order agreement costs. In lieu of the above signal timing improvement, upon mutual agreement between the City of Tacoma and the applicant, the applicant shall provide a monetary contribution toward a future improvement at this intersection in the amount corresponding to the above improvement." The City and the Developer agree that payment by the Developer to the City of the sum of \$3,500.00 is sufficient and appropriate to allow the City to address the impact identified in MDNS Condition 29.

3.2 Signage. MDNS Condition 30 provides that "If approved by WSDOT, at the intersection of Taylor Way E and SR 509, the applicant shall provide additional left-turn storage at the westbound left turn pocket on SR 509 to address the deficiencies identified in the above-referenced TIS for the City of Tacoma. In lieu of constructing the improvement, upon mutual agreement between the City of Tacoma and the applicant, the applicant shall provide a monetary contribution toward a future improvement at this intersection in the amount corresponding to the above improvement." The City and the Developer agree that payment by the Developer to the City of the sum of \$10,000.00 is sufficient and appropriate to allow the City to address the impact identified in MDNS Condition 30.

4. Payment. The Developer will make the mitigation payments described herein within 30 days of full execution of this Agreement.

5. Mitigation Implementation. Upon payment to the City of the sums identified in this Agreement, Developer shall have no further responsibility or liability for the impacts identified in MDNS Conditions 29 and 30. The City shall have full responsibility and liability for implementing the necessary mitigation.

6. Term of Agreement and Modification.

6.1 This Agreement shall become effective as of the date it is fully executed. This Agreement shall remain in effect until full payment is made to the City.

6.2 No modification of this Agreement is valid unless evidenced in writing and signed by both Parties. No oral agreement may supersede, replace or amend this Agreement.

6.3 No Party to this Agreement shall transfer or assign any right or obligation hereunder without the prior written consent of the other Party.

7. Default. In the event of a default in compliance with terms of this agreement by either Party, this Agreement shall terminate, the Parties rights and obligations under the MDNS Conditions 29 and 30 shall recur and be unaffected by the termination of this Agreement.

8. Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

9. Relationship of Parties. Developer and the City shall not be construed as having a joint venturer or partnership, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Developer shall have no right or authority, express or implied, to commit or otherwise obligate the City in any manner whatsoever except to the extent specifically provided herein or specifically authorized in writing by the City.

10. No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the Parties hereto and their respective successors and permitted assigns.

11. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, or sent via facsimile or email transmission to the fax numbers or email address set forth below, with machine confirmation of receipt followed by a "hard copy" mailed regular mail, within one (1) business day to the addresses listed as follows:

City: City of Tacoma  
747 Market Street  
Tacoma, WA 98402  
  
Attention:  
Facsimile:  
Email:

Developer: Prologis, Inc.  
12720 Gateway Drive, Suite 110  
Tukwila, WA 98168

Attention: Jake Maxwell  
Facsimile:  
Email: jmaxwell@prologis.com

Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

12. Non Waiver of Governmental Rights. Nothing contained in this Agreement shall require the City to take any discretionary action relating to development of the Project, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

13. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

14. Authority. Each of the persons signing below represent and warrant that they have the requisite authority to bind the party on whose behalf they are signing.

15. Attorneys' Fees. Each party shall be responsible for payment of the legal fees and costs of its own counsel in the event of any litigation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Agreement.

16. Non-Liability of City, Officials, Employees, and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

17. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, without regard to principles of conflicts of laws, and venue of any action brought to enforce this Agreement shall lie exclusively in Pierce County, Washington. Jurisdiction shall lie with the Superior Court of the State of Washington. The Parties hereto consent to the jurisdiction of the Pierce County Superior Court and waive the right to file suit elsewhere.

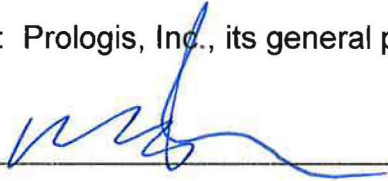
IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

CITY OF TACOMA

PROLOGIS, L.P.

By: Prologis, Inc., its general partner

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Attest:

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Doris Sorum, City Clerk

Approved as to form:

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Deputy City Attorney