

ORIGINAL

**DEVELOPMENT MITIGATION AGREEMENT  
BETWEEN THE CITY OF TACOMA AND  
IPT TACOMA LOGISTICS CENTER, LLC**

THIS DEVELOPMENT MITIGATION AGREEMENT (“Agreement”) is dated this \_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), between the City of Tacoma (the “City”), a Washington municipal corporation, and IPT Tacoma Logistics Center, LLC, (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 September 13, 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 Mitigation Measures 1 and 2.

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 Mitigation Measures 1 and 2 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 Mitigation Measures 1 and 2, 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 Control & Timing. MDNS Mitigation Measure 1 provides that “The traffic generated by a potential Warehouse land use on-site will create a significant impact to the traffic operations at the SR 509 off-ramp intersection with Portland Avenue. To reasonably mitigate this impact, the applicant will be required at the time of Building Permit issuance (or before), to complete or guarantee completion of one of the following measures:

- a. Design and implement the necessary infrastructure and control equipment to introduce signal control for the impacted intersection/interchange.
- b. Improve traffic operations, through enhanced traffic signal communication and coordination reliability, along Portland Avenue between Lincoln Avenue and Puyallup Avenue, which would encompass the impacted intersection/interchange, consisting of the applicant implementing the following:
  - i. Replacement of the existing traffic signal interconnect media with fiber optic communications and associated infrastructure as needed between the Portland Avenue traffic signals at Lincoln and Puyallup Avenues;
  - ii. Installation of new traffic signal cabinets meeting City of Tacoma specifications at the Lincoln Avenue and Puyallup Avenue intersections, and salvaging the existing cabinets to the City of Tacoma; and
  - iii. Transfer and establishment of applicable signal cabinet components into the two (2) new traffic signal cabinets and include new necessary components at/within the traffic signal cabinets to integrate with fiber optic communications;
- c. Enter into an agreement to provide funds in the amount of \$62,500, if, and only if, the realized development land use includes “Warehouse” land use elements consistent with the Institute of Transportation Engineers’ land use category description presented in the 9<sup>th</sup> edition of the Trip Generation Manual, to provide full funding of a City-led effort to implement the improvements described immediately above in Items b.i. through b.iii. and/or to implement or fund (in part or whole) improvements that would yield equal to or better results.”

The City and the Developer agree that if, and only if, the realized development land use includes “Warehouse” land use elements consistent with the Institute of Transportation Engineers’ land use category

description presented in the 9<sup>th</sup> edition of the Trip Generation Manual, payment by the Developer to the City of the sum of \$62,500.00 is sufficient and appropriate to allow the City to address the impact identified in MDNS Mitigation Measure 1; otherwise, a realized land use development of “High Cube Warehouse/Distribution Center” would not have an associated payment by the Developer to the City.

- 3.2 Roadway. MDNS Mitigation Measure 2 provides that “To mitigate the impact of the site’s generated traffic on the roadways (finding 29) [of the MDNS], the applicant shall choose one of the following mitigative measures:
- a. Implement the prescribed pavement section/structure (as identified in the appendix of the Transportation Impact Study), which has associated pavement design structural numbers ranging from about 7.7 to 8.5 depending on the land use development scenario and segment of Portland/Lincoln Avenue, through the reconstruction of Portland Avenue from East 11th Street to the I-5 interchange and Lincoln Avenue from Portland Avenue to east of Stewart Street (less the Lincoln Avenue bridge); or
  - b. Enter into an agreement to provide funds in the amount of \$100,000 (for High Cube Warehouse/Distribution Center Use) or \$145,000 (for Warehouse Use), as derived from the relative cost increase in paving material thickness (which ranges from 0.125 inches to 0.750 inches of asphalt depending on the land use scenario and roadway segment), as a funding component of a future City-led roadway project(s) to improve the ability of the pavement on Portland and Lincoln Avenues to support the anticipated traffic loading contributed by the site.”

The City and the Developer agree that if, and only if, the realized development land use includes “Warehouse” land use elements consistent with the Institute of Transportation Engineers’ land use category description presented in the 9<sup>th</sup> edition of the Trip Generation Manual, payment by the Developer to the City of the sum of \$145,000.00 is sufficient and appropriate to allow the City to address the impact identified in MDNS Mitigation Measure 1; otherwise, a realized land use development of “High Cube Warehouse/Distribution Center” would have an associated payment by the Developer to the City of the sum of \$100,000.00 that would be deemed sufficient and appropriate to allow the City to address the impact identified in MDNS Mitigation Measure 2.

4. Payment. The Developer will make the \$100,000 mitigation payment applicable to a “High Cube Warehouse/Distribution Center” use under paragraph 3.2.b within 30 days of full execution of this Agreement. If thereafter the Developer or a

successor proposes a "Warehouse" use under paragraph 3.1.c and paragraph 3.2.b, (the "Second Phase") it shall pay the additional \$107,500 at the time tenant improvement (T.I.) permit application(s) for that use are submitted.

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 Mitigation Measures 1 and 2. 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 be recorded and run with the land. This Agreement shall remain in effect until full payment, including any Second Phase 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.

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 Mitigation Measures 1 and 2 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: IPT Tacoma Logistics Center, LLC  
518 17th Street, 17th Floor  
Denver, Colorado 80202  
Telephone: (303) 869-4600

Attention: Joshua J. Widoff, General Counsel  
Telephone: (303) 869-4600  
Email: josh.widoff@blackcreekgroup.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

By: \_\_\_\_\_  
Kurtis D. Kingsolver, P.E.  
Public Works Director/City Engineer

\_\_\_\_\_  
Steve Victor  
City of Tacoma  
Deputy City Attorney

**IPT Tacoma Logistics Center LLC**, a Delaware limited liability company

By: BTC I REIT A LLC, a Delaware limited liability company, its sole member

By: Build-To-Core Industrial Partnership I LP, a Delaware limited partnership, its manager

By: IPT BTC I GP LLC, a Delaware limited liability company, its general partner

By: IPT Real Estate Holdco LLC, a Delaware limited liability company, its sole member

By: Industrial Property Operating Partnership LP, a Delaware limited partnership, its sole member

By: Industrial Property Trust Inc., a Maryland corporation, its general partner

By: \_\_\_\_\_  
Name: David VonDorburg  
Title: SR VP Development

Attest:

\_\_\_\_\_

Approved as to form:

\_\_\_\_\_

SEE CALIFORNIA  
ACKNOWLEDGMENT  
DATE 02/01/18 INTL [Signature]

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange )

On February 1, 2018 before me, Teresa D. Lewis, Notary Public  
(insert name and title of the officer)

personally appeared Peter Vandenburg,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

