



RESOLUTION NO. 2015-036

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, APPROVING A DEVELOPER'S CONTRACT WITH PROLOGIS, L.P., REGARDING THE PLATTING OF PROPERTY TO BE KNOWN AS LOTS 1 AND 2, BLOCK A, CORPORATE CENTER 35, AN ADDITION TO THE CITY OF FARMERS BRANCH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Prologis, L.P.. ("Developer") owns and desires to plat and develop a 24.498 acre tract of land located in the City of Farmers Branch to be known as Lots 1 and 2, Block A, Corporate Center 35, an addition to the City of Farmers Branch, Dallas County, Texas ("the Development"); and

WHEREAS, pursuant to the City's Subdivision Ordinance, Developer must execute a Developer's Contract and agree to, among other things, construct and provide certain utilities and other public improvements in association with the platting of Developer's property; and

WHEREAS, City Administration has negotiated a Developer's Contract, which it presents and recommends for approval; and

WHEREAS, the City Council of the City of Farmers Branch, Texas, finds it to be in the public interest to approve the recommended Developer's Contract;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Manager is authorized to execute, on behalf of the City of Farmers Branch, the Developer's Contract attached hereto as Exhibit "A," for the development of the Property described in said contract.

SECTION 2. This resolution shall become effective immediately upon its approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 16TH DAY OF JUNE, 2015.

ATTEST:

APPROVED:

Angela Kelly, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:6/3/15:71133)

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STATE OF TEXAS §
 §
COUNTY OF DALLAS §

DEVELOPER'S CONTRACT

This Developer's Contract ("Contract") is made as of the Effective Date by and among the City of Farmers Branch, a Texas home rule municipality (the "City"), and Prologis, L.P., a Delaware limited partnership (the "Developer"), acting by and through their duly authorized representatives. (The City and the Developer collectively called herein "Parties" and individually as "a Party" or "the Party.")

RECITALS:

WHEREAS, the Developer is the owner of real property in Farmers Branch, Texas described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Developer is developing the Property, proposed to be known as Lots 1 and 2, Block A, Corporate Center 35, an addition to the City of Farmers Branch, Dallas County, Texas; and

WHEREAS, the Developer desires to provide funding for the later construction of certain roadway improvements within Springlake Drive adjacent to the Property and to construct, utilities and other public improvements for the benefit of the Property.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged the City and the Developer agree as follows:

Article I
Term

The term of this Contract shall commence on the last date of execution hereof, and shall continue until the earliest of (a) the date all Parties have fully satisfied all terms and conditions of this Contract, or (b) the date this Contract is terminated as expressly provided herein.

Article II
Definitions

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

"Applicable Law" shall mean all local, state and federal laws, including the City Comprehensive Zoning Ordinance, the City Subdivision Ordinance, all City codes,

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ordinances and regulations applicable to this Contract.

“City” shall mean the City of Farmers Branch, Texas, a Texas home rule municipality.

“City Engineer” shall mean the City of Farmers Branch City Engineer, or designee.

“Commencement of Construction” shall mean that (i) the Construction Documents for the respective Public Improvements have been prepared and all approvals of the Construction Documents required by applicable governmental authorities have been obtained; and (ii) all necessary permits for construction of the respective Public Improvements pursuant to the respective Construction Documents therefore having been issued by all applicable governmental authorities; and (iii) the grading and/or preparation of right-of-way, or land as applicable, for the construction of respective Public Improvements has commenced.

“Completion of Construction” shall mean: (i) the respective Public Improvements have been substantially completed in accordance with the approved Construction Documents; and (ii) the respective Public Improvements have been accepted by the City in writing, in accordance with Applicable law.

“Construction Documents” shall mean the plans and specifications submitted for the construction of a Public Improvement that have been approved by the City Engineer.

“Developer” shall mean Prologis, L.P., a Delaware limited partnership.

“Effective Date” shall mean the last date of execution of this Contract.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by acts of omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Property” shall mean the real property described and shown in Exhibit “A” and Exhibit “B”, respectively, attached hereto.

“Project” shall collectively mean the Public Improvements to be constructed by the Developer.

“Public Improvements” shall mean the streets, alleys, water and sanitary sewer mains, drainage facilities, pedestrian and bicycle trails and other public infrastructure improvements required to be constructed and/or installed by the Developer in connection with the development of the Property by Developer and shall include, but not be limited to, any and all related excavation, street paving, alley paving, sidewalks, trail

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improvements within and offsite, landscaping, irrigation system, street lighting, storm drainage facilities, street signs, markings, water lines and appurtenances, fire hydrants, sanitary sewer lines and appurtenances, and median improvements.

Article III
Developer Obligations

3.1 **Withholding and/or Revocation of Certificate of Occupancy.** Except as otherwise provided in this Contract or the Applicable Law, the City shall not be obligated to grant a Certificate of Occupancy for any structure located on any portion of the Property until Completion of Construction of the Public Improvements. In the event that the Developer fails to comply with any material provisions of this Contract and such failure is not cured to the reasonable satisfaction of the City within 30 days after the delivery of written notice of such failure from the City to Developer, the City shall be authorized to revoke any and all certificates of occupancy for any building or structure on the Property, in accordance with Applicable Law.

3.2 **Platting.** The Property must be platted in accordance with Applicable Law prior to the issuance of any Building Permits for structures to be constructed on the Property.

3.3 **Public Improvements.** The Public Improvements within and contiguous to the Property must be designed, constructed and installed by the Developer, at no cost to the City, in accordance with the Applicable Law and the North Central Texas Council of Governments standard design and construction specification currently in effect.

- (a) The Developer shall submit to the City Engineer for review all Construction Documents and obtain approval of the Construction Documents from the City Engineer prior to the issuance of building permits for any buildings or structures within the Property.
- (b) The Developer shall dedicate by plat or separate instrument, at no cost to the City, all public street and/or fire lane easements, drainage easements, and utility and water easements, and public hike and bike trail easements required by the City for all Public Improvements located within and contiguous to the Property. In addition, the Developer shall be responsible at the Developer's sole cost for obtaining the dedication or conveyance to the City of any easement(s) not located on the Property but identified by the City Engineer as necessary to connect any of the elements of the Public Improvements to the existing street and/or public utilities systems or trails, such dedication and conveyance by separate instrument in a form approved by the City. The Developer shall also be responsible, at the Developer's sole cost, for obtaining temporary or permanent easements from adjacent property owners (which easements will not be dedicated to the City) that are necessary for constructing any portion of the storm water drainage systems required for Development of the Property and for drainage surface waters from the Property onto and through such easements. The City agrees to cooperate with Developer, as reasonably requested by Developer from time to time, in connection with such easements, but shall be under no obligations to incur any expense in

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providing such cooperation or to exercise its power of eminent domain.

- (c) All Public Improvements must be completed in accordance with the Construction Documents approved by the City Engineer prior to the issuance of any certificates of occupancy for any buildings or structures within the Property. The City shall be under no obligation to issue any certificate of occupancy for any building or structure within the Property until all the Public Improvements have been completed and accepted by the City.
- (d) All public utilities (water, sanitary sewer, gas, electric, telephone cable, and telecommunication cables installed or relocated on the Property pursuant to this Contract shall be placed underground, except (i) for equipment and appurtenances which must be located above-ground as approved by the City Engineer or (ii) as otherwise required by law or regulation or (iii) as otherwise approved by the City Engineer.
- (e) Upon the City's acceptance of such Public Improvements, the City shall be responsible for operating and maintaining at the City's cost all water mains and appurtenances, sanitary sewer mains and appurtenances, fire hydrants, sidewalks, street signs and markings located within easements (other than fire lane easements) on the Property.
- (f) The Developer shall be responsible for the maintenance of all underground storm sewer systems within the boundaries of the Property and responsible for general surface maintenance of all drainage easements and utility easements located within the Property including, but not limited to, mowing, installation and maintenance of landscape, irrigation, upkeep of pavement and clearing obstructions to drainage channels, culverts, and other drainage facilities and appurtenances. Unless otherwise agreed in writing by the City, the Developer and its successors in title shall maintain at its sole cost and expense any landscaping behind the curb and in landscaped medians of all streets and alleys within the Property or in public trail easements or street rights-of-way contiguous or adjacent to the Property, in the absence of curbs, outside of the paved areas of street and alleys notwithstanding the location of landscaped areas being within the dedicated right-of-way or easement. The foregoing maintenance obligations shall survive the termination of this Contract.

3.4 **Fire Lanes.** The Developer must provide fire lane access at locations required by the City Engineer and the City Fire Marshal. The Developer and/or its successors in title shall be responsible for the cost of construction and maintenance of all fire lanes within the Property, including, but not limited to, maintaining all required fire lane signs and markings, which maintenance obligations shall survive the termination of this Contract.

3.5 **Springlake Road.** The Developer understands, acknowledges, and agrees that the Developer is obligated to pay for the widening and reconstruction of Springlake Road in accordance with the Applicable Law prior to or concurrently with the development of the

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Property. Notwithstanding the foregoing, the Parties agree that it is in the best interest of the Parties that the widening and reconstruction of Springlake Road be delayed until additional development of adjacent properties occurs. Therefore, prior to the issuance of the first building permit by the City for construction of any structures on the Property, the Developer agrees to pay the City \$50,000.00 ("the Springlake Road Funds") to be held by the City and applied to the cost of the design and construction of Springlake Road at such time as the City or other party proceeds to reconstruct Springlake Road. After the Developer pays the Springlake Road Funds to the City, the Developer shall have no further obligation with respect to the reconstruction of Springlake Road pursuant to this Contract as it relates to the development of the Property. If, at any time, the City or other party fails to reconstruct Springlake Road as set forth herein, and Developer believes that the reconstruction of Springlake Road is then in the best interest of the Property, Developer will give the City written notice of such determination. In such event, either (a) the City shall agree in writing to commence the reconstruction of Springlake Road within 60 days, or (b) (i) Developer shall be entitled to commence the reconstruction of Springlake Road, at its sole cost and expense, in accordance with Applicable Law, and (ii) the City shall promptly return the Springlake Road Funds to the Developer, and (iii) deliver any other amounts escrowed by third parties with the City, for the widening, redevelopment, and/or reconstruction of Springlake Road, to Developer in reimbursement of Developer's actual, documented costs. If the City or other party fails to reconstruct Springlake Road by the tenth (10th) anniversary of the Effective Date, the Springlake Road Funds shall be returned to Developer without interest. Any refund of the Springlake Road Funds shall be personal to the Developer and shall not be made to the Developer's successor in title to the Property unless otherwise directed in writing by the Developer. In the event the Developer is not an existing legal entity at the time a refund, if any, is owed to the Developer pursuant to this Section 3.5, or if the Developer has transferred its assets to another person or entity and has failed to notify the City of the assignment of the Developer's rights to the refund pursuant to this Contract, the City shall be authorized to retain the balance of the Springlake Road Funds with no further obligation for payment of any refund, until such time as Developer notifies the City. The Developer represents, warrants, and agrees that the construction of the Springlake Road improvements will be a benefit to the use and development of the Property at such time as construction of the Springlake Road improvements is warranted.

3.6 **Maintenance Bonds.** Prior to the acceptance of the Public Improvements (including the reconstruction of Springlake Road, if undertaken by Developer) or any portion thereof, the Developer shall purchase and execute in favor of the City, a maintenance bond in an amount equal to 110% of the estimated annual repair and replacement costs for the Public Improvements, as reasonably determined by the City Engineer and form satisfactory to the City Engineer guaranteeing the payment of all costs related to the repair or replacement of the Public Improvements constructed on the Property. The Maintenance Bond will have an effective term of one (1) year from the date of Final Acceptance of the Public Improvements by the City.

Article IV
Indemnification

THE DEVELOPER AGREES TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, AND THIRD PARTY

REPRESENTATIVES (COLLECTIVELY REFERRED TO AS "CITY") FROM ANY AND ALL CLAIMS, DAMAGES, CAUSES OF ACTION OF ANY KIND WHATSOEVER, STATUTORY OR OTHERWISE, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE AND LAWSUITS AND JUDGMENTS, INCLUDING COURT COST, EXPENSES AND ATTORNEY'S FEES, AND ALL OTHER EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE PERFORMANCE OF THIS CONTRACT BY THE DEVELOPER, ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND CONTRACTORS, OR ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE DEVELOPER, ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND CONTRACTORS. THIS ARTICLE IV SHALL SURVIVE THE TERMINATION OF THIS CONTRACT. NOTWITHSTANDING THE FOREGOING, AT SUCH TIME AS THE PUBLIC IMPROVEMENTS AND OTHER FACILITIES ARE ACCEPTED BY THE CITY FOR OWNERSHIP AND MAINTENANCE, THE DEVELOPER SHALL NOT BE RESPONSIBLE FOR ANY CLAIMS, DAMAGES, OR CAUSES OF ACTION, OCCURRING AFTER SUCH PERIOD, EXCEPT AS SET FORTH IN SECTION 5.2 BELOW.

Article V
Liability for Plan Approval

5.1 **Approval of Construction Documents.** No approval of designs, plans, and specifications by the City shall be construed as representing or implying that improvements built in accordance therewith shall be free of defects, and any such approvals shall in no event be construed as representing or guaranteeing that any improvements built in accordance therewith will be designed or built in a good and workmanlike manner. Neither the City nor its elected officials, officers, employees, contractors, and/or agents shall be responsible or liable in damages or otherwise to anyone submitting plans and specifications for approval by the City for any defects in any plans or specifications submitted, revised, or approved, any loss or damages to any person arising out of approval or disapproval or failure to approve or disapprove any plans or specifications, any loss or damage arising from the noncompliance of such plans or specifications with any governmental ordinance or regulation, nor any defects in construction undertaken pursuant to such plans and specifications.

5.2 **Indemnity Against Design Defects.** Approval by the City Engineer or other City employee, officer, or consultant of any plans, designs or specifications submitted by the Developer under this Contract shall not constitute or be deemed to be a release of the responsibility and liability of the Developer, its engineers, contractors, employees, officers, or agents for the accuracy and competency of their design and specifications. Such approval shall not be deemed to be an assumption of such responsibility or liability by the City for any defect in the design and specifications prepared by the Developer's consulting engineer, his officers, agents, servants, or employees, it being the intent of the parties that approval by the City Engineer or other City employee, officer or consultant signifies the City approval of only the general design concept of the improvements to be constructed. IN THIS CONNECTION, THE DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, AFTER THE WRITTEN APPROVAL AND ACCEPTANCE OF THE IMPROVEMENT BY THE CITY FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES,

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INCLUDING DEATH, TO ANY AND ALL PERSONS WHICH MAY ARISE OUT OF ANY DEFECT, DEFICIENCY OR NEGLIGENCE OF THE ENGINEER'S DESIGNS AND SPECIFICATIONS TO THE EXTENT PREPARED OR CAUSED TO BE PREPARED BY DEVELOPER AND INCORPORATED INTO ANY IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH, AND THE DEVELOPER SHALL DEFEND AT THE DEVELOPER'S OWN EXPENSE ANY SUITS OR OTHER PROCEEDINGS BROUGHT AGAINST THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, OR ANY OF THEM, ON ACCOUNT THEREOF, TO PAY ALL EXPENSES AND SATISFY ALL JUDGMENTS WHICH MAY BE INCURRED BY OR RENDERED AGAINST THEM, COLLECTIVELY OR INDIVIDUALLY, PERSONALLY OR IN THEIR OFFICIAL CAPACITY, IN CONNECTION HERewith.

Article VI
Termination

This Contract may be terminated by the mutual written consent of the parties. Either party may terminate this Contract if the other party breaches any of the terms and conditions of this Contract, and such breach is not reasonably cured by such party within sixty (60) days after receipt of notice thereof.

Article VII
Miscellaneous

7.1 **Release**. Upon the full and final satisfaction by the City and the Developer of their respective obligations contained in Article III of this Contract, the City Manager and the Developer shall execute and record in the Official Public Records of Dallas County a release of the City and the Developer from their obligations set forth herein save and except any perpetual maintenance obligations of the Developer and its successors and assigns which survive the termination of this Contract.

7.2 **Notice**. All notices required by this Contract shall be in writing and addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery.

If intended for Developer, to:

Prologis, L.P.
Att: Market Officer
2501 N. Harwood Street, Ste 2450
Dallas, TX 75201

With copy to:

Prologis, L.P.
Attn: Legal Department
4545 Airport Way
Denver, Colorado 80239

If intended for City, to:

Gary D. Greer, City Manager
City of Farmers Branch, Texas

With copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith,

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13000 William Dodson Parkway
Farmers Branch, Texas 75234

LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

With copy to City Engineer:

City Engineer
City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, Texas 75234

7.3 **Project Construction Documents.** Except as otherwise provided, the Construction Documents for all Public Improvements shall be submitted to the City Engineer for review and approval prior to Commencement of Construction of the respective Public Improvements. The Construction Documents shall become the property of the City as a condition for acceptance of the public improvements.

7.4 **Successors and Assigns.** All obligations and covenants of the Developer under this Contract shall be binding on the Developer, its successors and permitted assigns. The Developer may not assign this Contract without the prior written consent of the City Manager, not to be unreasonably withheld.

7.5 **Severability.** In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Contract shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

7.6 **Governing Law.** The validity of this Contract and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and exclusive venue for any action concerning this Contract shall be in State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

7.7 **Entire Contract.** This Contract embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to the matters in this Contract, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Contract.

7.8 **Recordation of Contract.** A copy of this Contract shall be recorded in the Official Public Records of Dallas County, Texas.

7.9 **Covenants Run With Property.** The provisions of this Contract are hereby declared covenants running with the Property and are fully binding on the Developer and each and every subsequent owner of all or any portion of the Property but only during the term of such party's ownership thereof (except with respect to defaults that occur during the term of such

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person's ownership) and shall be binding on all successors, heirs, and assigns of the Developer which acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Contract with respect to the right, title or interest in such Property.

7.10 **Recitals.** The recitals to this Contract are incorporated herein.

7.11 **Exhibits.** All exhibits to this Contract are incorporated herein.

7.12 **Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

7.13 **Compliance with Laws.** The Developer shall fully comply with the Applicable Law.

7.14. **Construction Specifications.** The Public Improvements shall be designed and constructed in compliance with the Applicable Law.

7.15 **Further Acts.** The City and the Developer agree to execute such additional documents as may be reasonably requested by either party in order to implement the transactions reflected by this Contract.

(Signatures on Following Page)

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SIGNED AND AGREED this ____ day of _____, 2015.

City of Farmers Branch, Texas

By: _____
Gary D. Greer, City Manager

ATTEST

By: _____
Angela Kelly, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

SIGNED AND AGREED this ____ day of _____, 2015.

Prologis, L.P., a Delaware limited partnership

By: Prologic, Inc., a Maryland corporation

By:  _____
Reid Dunbar, Senior Vice-President

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City Acknowledgment

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This instrument was acknowledged before me on ____ day of _____, 2015, by Gary D. Greer, City Manager, City of Farmers Branch, Texas, a Texas home rule municipality, on behalf of said municipality.

Notary Public, State of Texas
My Commission Expires: _____

Developer Acknowledgments

STATE OF TEXAS §
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This instrument was acknowledged before me on the 2 day of JUNE, 2015, by Reid Dunbar, the SVP, Capital Deployment of Prologis, Inc., a Maryland corporation and general partner of Prologis, L.P., a Delaware limited partnership on behalf of said corporation and partnership.



Notary Public, State of Texas
My Commission Expires: 1-3-18

EXHIBIT "A"

LEGAL DESCRIPTION AND PROPOSED REPLAT OF THE PROPERTY

