



City of Wilmington
Finance, Administration & Land Acquisition Committee
Tuesday, May 17, 2016 at 6:00 p.m.

Location & Time

Council Chamber
Wilmington City Hall
1165 S. Water Street
6:00 p.m. 05/17/16

Agenda

1. Call to Order
2. Approval of the April 19, 2016 Meeting Minutes
3. Review Accounting Reports as Presented by City Accountant
4. New Business
 - a. Review/Approve First Amendment to Annexation with the City of Wilmington, Joliet Arsenal Development Authority and Prologis
 - b. Review/Approve Union Pacific Railroad Company Pipeline Crossing Agreement
 - c. Review Project Highpoint Economic Development Incentive Agreement
 - d. Update of Proposed Water Rates
 - e. Review of FY 2017 Budget
5. Adjournment

**Finance, Administration
& Land Acquisition
Committee Members**

Frank Studer, Co-Chair
Fran Tutor, Co-Chair
John Persic, Jr.
Kevin Kirwin
Larry Hall
Kirby Hall
Joe Van Duyne
Steve Evans

Committee: Finance, Administration and Land Acquisition

Date: Tuesday April 19, 2016

Time: 6:00 p.m.

Members

Present: Aldermen L. Hall, Kirwin, K. Hall, Evans, Tutor, Persic, VanDuyne and Studer

Non-Members

Present: Mayor Orr, City Clerk Judy Radosevich, City Administrator Tony Graff, City Accountant Kim Doglio, City Engineer Zemaitis, City Attorney Urban, Mike Morley, Waste Management and Adam Tyler, Vice President . Dispositions, ProLogis.

Alderman Studer called the Finance, Administration and Land Acquisition Committee Meeting to order at 6:00 pm

Approve of the March 16, 2016 Meeting Minutes

Alderman L. Hall made a motion and Alderman Tutor seconded to approve the March 16, 2016 committee meeting minutes as written and have them placed on file, motion passed.

Review Accounting Report as Presented by the City Accountant

Kim Doglio the City Accountant reviewed the Check Register and the Collector's Report and noted that there is nothing unusual. The State is current with taxes and the General Ledger still has 2 weeks left in this Fiscal Year.

New Business:

- a. Review/ Approve the Waste Management Proposal for Garbage, Refuse, Recycling and Yard Waste Collection Services with the City of Wilmington (Contract beginning May 1, 2016 and ending April 30, 2021)**

Alderman K. Hall made a motion and Alderman L. Hall seconded to send to full Council for final approval, motion passed

- b. Update – Openlands S. Island Park Property and Cell Tower Payment Request**

Administrator Graff will be meeting with the Director of Openlands to go over the options on how to exit the agreement with Openlands that will be agreeable to both sides.

c. Discussion on the First Amendment to the JADA/Prologis Annexation Agreement and Request to Publish for a Public Hearing on 5/17/2016

After a lengthy discussion the Committee came to a consensus to move forward with a Public Hearing for May 17, 2016 to amend the Annexation Agreement

d. Review & Approve the Service Agreement for On-Call Water and Wastewater Engineering Support as provided by Strand Associates, Inc.

Alderman Tutor made a motion and Alderman K. Hall seconded to send to full council for final approval, motion passed

The April 19, 2016 Finance, Administration & Land Acquisition Meeting adjourned at 6:56 p.m.

Respectfully Submitted,

Judith Radosevich
City Clerk

FIRST AMENDMENT TO ANNEXATION AGREEMENT

This First Amendment to Annexation Agreement (the “Amendment”) is entered into as of the Amendment Effective Date (defined below) by and among THE CITY OF WILMINGTON, an Illinois municipal corporation (the “City”), PROLOGIS, A Maryland real estate investment trust (“ProLogis”), and THE JOLIET ARSENAL DEVELOPMENT AUTHORITY, an Illinois municipal corporation (JADA).

RECITALS

A. City, ProLogis and JADA entered into the City of Wilmington Illinois Annexation Agreement ProLogis Park Arsenal dated March 20, 2007 and recorded in the Office of the Will County, Illinois Recorder of Deeds on May 29, 2007 as Document No. R 2007081620 with respect to certain property located in Wilmington, Illinois that is more fully described in the Annexation Agreement (the Industrial Park).

B. City, ProLogis, and JADA wish to amend the Annexation Agreement as more fully set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration the receipt of which is acknowledged, City, ProLogis, and JADA agree the original Annexation Agreement be amended to read as follows:

City of Wilmington, Illinois Annexation Agreement
ProLogis Park Arsenal

By and Among
The City of Wilmington, Illinois
The Joliet Arsenal Development Authority,
and
ProLogis

Dated as of

–

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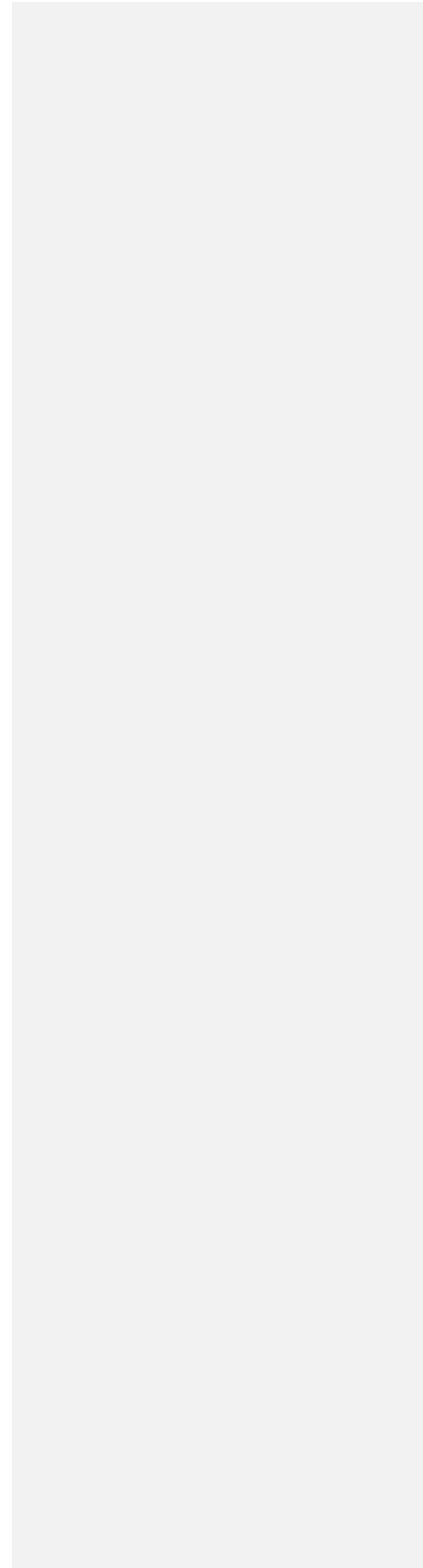
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EXHIBITS

- Exhibit A The Subject Property (i.e., the portion of the JADA real estate being annexed for the first time)
- Exhibit B Adjacent Property
- Exhibit C Industrial Park (i.e., the Subject Property and the Adjacent Property)
- Exhibit D Plat of Annexation
- Exhibit E I-4 Zoning District Regulations
- Exhibit F Preliminary Site Plan
- Show permissible building areas
 - Show location of Will County Highway Department
 - Show location of proposed Water Tower (§§22, 34)
 - Show western portion of South Arsenal Road Improvements (§7(B)) in relation to newly constructed bridge
 - Show eastern portion of South Arsenal Road Improvements (§7(B)) in relation to newly constructed bridge
 - Show access points (§7(D))
 - Show area north of South Arsenal Road to be dedicated for roadway purposes (§8)
 - Show area north of South Arsenal Road to be dedicated for utility easements (§8)
 - Include a Landscape Plan? [per §10]
- Exhibit G Modifications to City Ordinances
- Exhibit H South Arsenal Road Improvement Specifications ([Description of work and typical section plan and specifications (§7B); including the "South Arsenal Road Typical Section – Route 53N Chicago Road" dated 12-1-06 prepared by Geotech, Inc.]
- Exhibit I City of Wilmington/JADA/ProLogis Tax Abatement Agreement
- Exhibit I-1 City of Wilmington/JADA/ProLogis/School District Tax Abatement Agreement
- Exhibit J Potential "Initial Take-Down Area" (§ 15)
- Exhibit K Sample Architecture

Exhibit L	City Lift Station and Pump Specifications
Exhibit M	Water's Edge Settlement Agreement
Exhibit N	Water Tower General Specifications (§ 22)
Exhibit O	Insurance Specifications
Exhibit P	Old Chicago Road Improvements
Exhibit Q	Sign Specifications and Preliminary Sign Locations
Exhibit R	Recapture Agreement
Exhibit S	Overlay Specifications



CITY OF WILMINGTON, ILLINOIS
ANNEXATION AGREEMENT

JOLIET ARSENAL DEVELOPMENT AUTHORITY
PROLOGIS PARK ARSENAL

THIS FIRST AMENDED ANNEXATION AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this ___ day of _____, 2016, by and among the **CITY OF WILMINGTON**, an Illinois municipal corporation, Will County, Illinois (hereinafter referred to as "the City"), by and through the Mayor and City Council of the City (hereinafter collectively referred to as the "corporate authorities") on the one hand, and the **JOLIET ARSENAL DEVELOPMENT AUTHORITY**, an Illinois municipal corporation (hereinafter referred to as "**JADA**"), and **PROLOGIS**, a Maryland real estate investment trust ("ProLogis").

Deleted: 2007

W I T N E S S:

WHEREAS, JADA is the record owner of approximately 689.26 acres of real property located in Will County, Illinois legally described in Exhibit A, attached hereto and made part hereof (the "Subject Property"), which property is contiguous to the City and not within the corporate limits of any municipality; and

WHEREAS, JADA is the fee owner of record of approximately 86.872 acres of real property located in the City located to the south of the Subject Property legally described in Exhibit B, attached hereto and made part hereof (the "Adjacent Property"); and

WHEREAS, the Adjacent Property has previously been annexed to the City pursuant to that certain Annexation Agreement dated October 11, 2005, between City and JADA authorized pursuant to City Ordinance No. 05 10 11 01 approving said Annexation Agreement (the "Adjacent Property Annexation Agreement"), Ordinance No. 05-10-11-02 annexing the

Adjacent Property into the City and City Ordinance No. 05-10-11-03, rezoning the Adjacent Property to the I-1 Zoning District under the City Zoning Ordinance; and

WHEREAS, ProLogis is the contract purchaser of the Subject Property and the Adjacent Property from JADA, and intends to acquire title to all or portions of the Subject Property and the Adjacent Property from JADA by means of either one real estate closing or by means of multiple real estate closings as to designated portions of the Subject Property and the Adjacent Property to develop the Subject Property and the Adjacent Property as the "ProLogis Park Arsenal", for industrial, commercial, business and public uses more fully described herein, said properties being collectively described on Exhibit C attached hereto and made part hereof (the Subject Property and Adjacent Property combined, comprising together approximately 776.13 acres, are sometimes hereinafter referred to collectively as the "Industrial Park"); and

WHEREAS, by means of this Agreement JADA, ProLogis and the City intend: (a) to set forth the terms and conditions on which the Subject Property is annexed to the City; (b) to replace the Adjacent Property Annexation Agreement in its entirety with this Annexation Agreement as a complete amendment and restatement of said prior Adjacent Property Annexation Agreement; and (c) as a result, set forth the terms and conditions in which the Industrial Park is annexed to the City; and

WHEREAS, the City is a municipal corporation organized and existing under the laws of the State of Illinois exercising the powers granted to it by Article VII, Section 7 of the Constitution of the State of Illinois and by the statutes and laws of the State of Illinois; and

WHEREAS, the parties have agreed that the Industrial Park shall be annexed and zoned so as to permit the development and operation of industrial, commercial and other business and public uses as hereinafter more particularly set forth; and

WHEREAS, there has been filed with the City Clerk of the City a petition for annexation signed by all of the owners of record of the Subject Property, there being no electors residing thereon; and

WHEREAS, the contemplated annexation of the Subject Property is depicted on the plat attached hereto as Exhibit "D" and incorporated by reference (hereinafter, the "Plat of Annexation"); and

WHEREAS, ProLogis, with JADA's consent has requested that the City proceed to adopt zoning text amendments establishing a new I-4 Large Scale Industrial Development District classification and has also filed one or more petitions in proper form with the corporate authorities of the City requesting that the Industrial Park be classified as I-4 (Large Scale Industrial Development District) under the City's Zoning Ordinance, that preliminary site plan approval be given and that variations from the City Code (Chapter 159, entitled "Flood Hazard Areas") be granted for the Industrial Park; and

WHEREAS, JADA and ProLogis desire the annexation of the Subject Property and the development of the Industrial Park pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, the Planning and Zoning Commission of the City, being the commission duly designated by the corporate authorities of the City for such purpose has, on January 4, 2007, held public hearings on the petition(s) for the proposed text amendments to the City Zoning Ordinance establishing an I-4 zoning district classification, the proposed I-4 zoning district classification for the Industrial Park and the preliminary site plan approval for the Industrial Park; and

WHEREAS, due notice of said public hearings with respect to the proposed zoning text amendment, the proposed rezoning and the preliminary site plan approval for the Industrial Park

was given and published in the manner required by law, and said public hearings were held in all respects in a manner conforming to law; and

WHEREAS, the Planning and Zoning Commission of the City has heretofore made its report and recommendations, including its findings of fact, to the corporate authorities of the City recommending approval of the proposed I-4 zoning text amendment, the I-4 zoning district classification for the Industrial Park and the preliminary site plan approval for the Industrial Park; and

WHEREAS, the corporate authorities of the City have duly considered the report and recommendations of the Planning and Zoning Commission as heretofore stated; and

WHEREAS, the corporate authorities of the City have, on March 20, 2007 held a public hearing on this Annexation Agreement, and upon the replacement of the Adjacent Property Annexation Agreement in its entirety with this Annexation Agreement as a complete amendment and restatement of the Adjacent Property Annexation Agreement and due notice of said public hearing was given and published in the manner required by law and said public hearings were held in all respects in a manner conforming to law; and

WHEREAS, all other required public hearings in connection with the terms and conditions of this Annexation Agreement have been held in accordance with the ordinances of the City and the statutes of the State of Illinois; and

WHEREAS, all other matters, in addition to those specifically referred to above, which are included in this Annexation Agreement, have been considered by the parties hereto, and the development of the Industrial Park for the uses as permitted under the Zoning Ordinance of the City, as amended pursuant to the terms of this Agreement, will inure to the benefit and improvement of the City and its residents, will promote the sound planning and development of

the City, will assist the City in realizing the goals of its Comprehensive Plan and will otherwise enhance and promote the general welfare of the people of the City and the entire region; and

WHEREAS, the Subject Property is not within the borders of any library district, nor does the City provide fire protection services; and

WHEREAS, notices of the proposed annexation have been duly and timely given to the Florence Township Supervisor and Board of Trustees and the Florence Township Commissioner of Highways in the manner required by law; and

WHEREAS, in reliance upon the execution of this Agreement by the City, and the performance by the City of the undertakings hereinafter set forth to be performed by it, there have been submitted the aforesaid petition for annexation, and the City, JADA and ProLogis are willing to undertake the obligations as hereinafter set forth and have or will have materially changed their positions in reliance upon this said Agreement and the undertakings contained therein; and

WHEREAS, it is the desire of the parties hereto that the development of the Industrial Park proceed subject to the terms and conditions hereinafter contained; and

WHEREAS, the Corporate Authorities of the City, after due and careful consideration, have concluded that the annexation and development of the Industrial Park, upon the terms and conditions hereinafter set forth, would further the growth of the City and serve the best interests of the citizens of the City; and,

WHEREAS, by a favorable vote of at least two-thirds (two-thirds) of the Corporate Authorities of the City then holding office, an ordinance has been adopted authorizing the execution of this Annexation Agreement; and

WHEREAS, due notice of this proposed First Amended Annexation Agreement has been provided as required by law,

and,
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WHEREAS, after a duly conducted public hearing thereon and by a favorable vote of at least two-thirds (two-thirds) of the Corporate Authorities of the City then holding office, an ordinance has been adopted authorizing the execution of this First Amended Annexation Agreement; and

Deleted: ¶

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto agree as follows:

GENERAL PROVISIONS

Section 1. Incorporation of Recitals and Exhibits.

The preceding "Whereas" clauses and all Exhibits referred to therein and in the body of this Agreement are hereby made a part of this Agreement and incorporated herein as if fully set forth.

Section 2. Applicable Law.

This Agreement is made pursuant to and in accordance with the provisions of Section 11-15.1-1 et seq. of the Illinois Municipal Code, as amended (65 ILCS 5/11-15-1.1 et seq.) and pursuant to and in accordance with the other authority of the City which it exercises pursuant to the Constitution and laws of the State of Illinois, including but not limited to, Article 7 Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act (5 ILCS 22011 et seq.) All terms and conditions of this Agreement, and all acts of the City pursuant to this Agreement are entered into and performed pursuant to the statutes in such cases made and provided.

Section 3. Agreement - Compliance and Validity.

JADA and ProLogis have filed with the City Clerk of the City a proper petition for the annexation of the Subject Property to the City pursuant to and in accordance with the provisions of Section 7-1-8 of the Illinois Municipal Code, as amended, 65 ILCS 5/7-1-8, conditioned upon the execution of this Agreement.

Section 4. Property Subject to this Agreement.

The property to be annexed pursuant to this Agreement consists of approximately 689.26 acres of land, more or less, situated in unincorporated Florence Township, Will County, Illinois,

contiguous to the corporate limits of the City and is known and described in Exhibit A to this Agreement as the "Subject Property." In addition, this Agreement replaces the Adjacent Property Annexation Agreement in its entirety as a complete amendment and restatement of the same, said Adjacent Property comprised of approximately 86.872 acres being described in Exhibit B attached hereto and made part hereof. As a result, this Annexation Agreement sets forth the terms and conditions for the Subject Property and Adjacent Property combined, as described in Exhibit C attached hereto and collectively referred to as the "Industrial Park".

DEVELOPMENT PROVISIONS

Section 5. Enactment of Annexation Ordinance.

The City, immediately prior to its execution and delivery to JADA and ProLogis of this Annexation Agreement, shall adopt an ordinance authorizing the City's execution and delivery of this Agreement and the City's termination of the Adjacent Property Annexation Agreement.

Section 6. Enactment of Zoning and Other Ordinances.

At the next available City Council meeting following either (i) the closing of the conveyance of Phase I as depicted on Exhibit F attached hereto and made part hereof from JADA to ProLogis, or (ii) ProLogis' issuance of a notice to the City that ProLogis has waived all conditions precedent to ProLogis' obligation to close on Phase I with JADA (but for title, survey and escrow requirements), the City shall adopt proper ordinances:

- (A) Annexing the Subject Property into the City (the "Annexation Ordinance");
- (B) Adopting the "I-4 Large Scale Industrial Planned Development District" regulations attached hereto as Exhibit E and made part hereof (the "I-4 Zoning District Regulations");

(C) Rezoning the Industrial Park to the I-4 Large Scale Industrial Development District under the City's Zoning Ordinance; and

(D) Approving the preliminary site plan for the entire Industrial Park pursuant to the preliminary site plan provisions of the I-4 Zoning District Regulations, which preliminary site plan shall be in the form attached hereto as Group Exhibit F and made part hereof (the "Preliminary Site Plan").

(E) Authorizing the City's execution and delivery of the Recapture Agreement between the City and ProLogis as described below in Section 31, and attached hereto as Exhibit S and made part hereof (the "Recapture Agreement").

(F) Approving the variation from the City Code (Chapter 159, entitled "Flood Hazard Areas") as set forth on Exhibit G, attached hereto and made part hereof.

The City agrees that in the event ProLogis, JADA, or any other Owner of the Industrial Park requests to amend either the Preliminary Site Plan or any subsequent Final Site Plan approval pursuant to the I-4 Zoning District Regulations or seeks either a "Minor Change" or "Major Change" to the Preliminary Site Plan or any Final Site Plan, the City's review of such a request shall not be unreasonably withheld or unduly delayed

Any use now or hereafter allowed as a permitted use under the I-4 Zoning District Regulations shall be permitted in the Industrial Park without necessity of further hearings or zoning relief except as provided in the I-4 Zoning District Regulations. In the event of a conflict between the I-4 Zoning District Regulations and this Agreement, the terms of this Agreement shall govern.

The Preliminary Site Plan and Final Site Plan procedures set forth in the I-4 Zoning District Regulations shall, as to the Industrial Park, replace in their entirety the site plan

approval, appearance review approval, and landscaping approval process and requirements set forth in Sections 150.19 and elsewhere in the City's zoning ordinance (including without limitation the planned unit development provisions contained in the City's zoning ordinance). The City shall approve any proposed architectural elevations for development within the Industrial Park that is materially consistent with the "Sample Architecture" attached hereto as Exhibit K and made a part hereof. At an Owner's election, the yards facing South Arsenal Road will be treated as the front yard of a given lot or parcel.

The Annexation Ordinance for the Subject Property shall be filed with the Clerk of Will County and recorded at ProLogis' expense with the Will County Recorder's Office along with a Plat of Annexation prepared by ProLogis in compliance with State law. Such filing and recordation shall take place no more than thirty (30) days after enactment of the Annexation Ordinance. The City shall send all notices required by law to be sent in connection with the enactment of the Annexation Ordinance, and shall furnish copies thereof to ProLogis and to JADA.

Section 7. Roads, Streets and Right-of-Way Improvements

Deleted: ~~<#>Secondary Roads.~~ All internal streets within the Industrial Park shown as "Secondary Roads" on the Preliminary Site Plan (the "Secondary Roads") shall be public and dedicated to the City except as provided herein. Secondary Roads, including all right-of-way improvements, shall be designed, engineered and constructed at no cost to the City. Notwithstanding the City's acceptance of the dedication of the aforesaid Secondary Roads, Owners shall be responsible for the maintenance, repair and replacement of such Secondary Roads in a good and workmanlike manner consistent with the City's maintenance (including snow plowing), repair and replacement of comparable City streets at Owners' sole cost and

(1) ▾

(A) Additional Requirements. All Secondary Roads shall provide a sixty (60) foot right of way and a forty (40) foot wide street as measured from face of curb to face of curb. All Secondary Roads shall feature underground storm sewers, curbs, and gutters, and may in addition contain telecommunications, electricity, natural gas, storm sewer, water facilities and other utilities within the right of way and not under the road surface (except as necessary to

- 10 -

Deleted: expense which shall be paid for by means of the property owners' associations described below in Section 37.¶
At any time on or before the issuance of the first building permit for the construction of an occupiable building, the Owners of the Phase in which the building is located (as Phases I, II and III are depicted in Group Exhibit F) shall form a property owner's association which shall provide the City with a covenant in recordable form which shall survive the expiration of this Agreement which provides that the relevant property owner's association for each Phase shall¶
<#>maintain, repair and replace the Secondary Roads as provided in this Section 7(A);¶
¶
defend, indemnify and hold the City, its officers, agents and employees harmless from and against personal injury or property damage claims arising out of the installation, maintenance, repair and replacement of said Secondary Roads, and (3) provide the City from time to time with the property owner association's current, commercially reasonable certificate of public liability insurance from a reputable insurance carrier naming the City as an additional primary (not contributory) insured and with a contractual liability endorsement. The certificate shall provide that the insurance policy will not be cancelled or terminated without thirty (30) days prior written notice to the City. In the event the insurance is not provided or maintained as required herein the City may purchase such insurance on commercially reasonable terms and the property owners' association shall pay the City for such expense.

intersect road surfaces). Sidewalks shall not be required either on Secondary Roads or on South Arsenal Road. Street lighting shall be required only at the intersections of Secondary Roads with South Arsenal Road.

Pavement materials and specifications for Secondary Roads shall otherwise be in accordance with Section 152.77 of the City subdivision ordinance. Either bituminous concrete or concrete may be utilized for Secondary Roads.

Upon request, but not sooner than the installation of the final wearing or surface lift, the City shall accept the dedication of Secondary Roads upon the completion of said improvements as provided in this Section and applicable City ordinances. The installation of the final wearing surface or lift (in the case of asphalt surfaces) shall be deferred for a minimum period of twelve (12) months after installation of the base and binder course. ~~Owner constructing such Secondary~~ Road shall warrant the quality of the construction of public streets per Section 152.93(B) of the City subdivision ordinance, and shall provide a letter of credit for a two (2) year period after acceptance securing said warranty to the City.

Deleted: Either ProLogis or any other

During construction, reasonable efforts shall be utilized by the responsible Owner to keep all Secondary Roads located within the Industrial Park as well as adjoining public streets clear from dust, mud and debris generated by construction or other activity in the Industrial Park.

(B) Miscellaneous Road Issues. After consultation with the City, ~~shall~~ designate construction entrances for construction activity and traffic. The design and construction standards for the network of Secondary Roads within the Industrial Park shall be in accordance with the final engineering plans as approved by the City pursuant to the standards set forth in the subdivision ordinance of the City, as modified by this Agreement. Auto parking areas and non-fire lane auto parking area aisles shall have an aisle cross section of twenty-four

Deleted: ProLogis

(24) feet in width. All other roadways and aisles in truck and trailer storage areas shall have an aisle cross section of twenty-four (24) feet in width; however, fire lanes shall be eighteen (18) feet in width. The Owners, on their behalf and on behalf of the property owners' associations, shall execute an agreement giving the City the authority to enforce the Illinois Motor Vehicle Code and local traffic and parking regulations on any private streets. Subject to reasonable approval by the City, may initially name all Secondary Roads located wholly within the Industrial Park.

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(C) Road Phasing. The City acknowledges and agrees that the construction of the Industrial Park and the Secondary Roads will proceed in phases on an "as needed" basis, and that the completion of all the Secondary Roads shall not be a prerequisite to the City's issuance of permits for grading, earth work, site balancing, infrastructure installation, foundations, building construction or similar permits for the Industrial Park and for its use and occupancy.

Deleted: shown on the Preliminary Site Plan

(D) JADA Improvement of South Arsenal Road. JADA hereby undertakes and agrees, at JADA's sole cost (but inclusive of any grant funds as JADA may obtain for such purposes from third party governmental entities and from ProLogis), to reconstruct and widen South Arsenal Road eastward of the intersection of Prairie View Road and South Arsenal Road to the intersection of South Arsenal Road and Old Chicago Road, in accordance with the "Typical South Arsenal Road Cross-Section - Prairie View Road to Chicago Road" prepared by K-Plus and dated 12/1/06 being attached hereto as Exhibit H (herein called the "South Arsenal Road Improvements").

At JADA's sole cost, detailed engineering plans and specifications for the South Arsenal Road Improvements, consistent with the typical section plan and specifications included in

Exhibit H, have been and will continue to be prepared and submitted to the City for its review and reasonable approval. The respective engineers for the City and JADA shall reasonably cooperate to review and revise said detailed engineering plans and specifications in conjunction with ProLogis, and thereafter agree upon final engineering plans and specifications for the South Arsenal Road Improvements (hereinafter called "Final Plans").

JADA shall (i) complete the west segment of the South Arsenal Road Improvements (i.e., the segment west of the newly constructed bridge on South Arsenal Road at the location shown on Exhibit F to the intersection of South Arsenal Road and Prairie View Road (the "West Segment of South Arsenal Road")) on or before October 31, 2007, and (ii) complete the east segment of the South Arsenal Road Improvements (i.e., the segment east of the newly constructed bridge on South Arsenal Road at the location shown on Exhibit F to Old Chicago Road (the "East Segment of South Arsenal Road") on or before October 31, 2008, in both cases subject to force majeure, as defined below. Until the South Arsenal Road Improvements are completed, (a) JADA shall reimburse the City for the reasonable out of pocket costs incurred by the City to repair the existing South Arsenal Road, and (b) the City, ProLogis and JADA shall work cooperatively to arrange for adequate alternate means of construction ingress and egress to the Industrial Park based upon the assumption that portions of South Arsenal Road will be completely shut down during its reconstruction.

Upon completion of functional segments of the reconstructed South Arsenal Road, and following normal engineering plan review and testing by the City and the delivery of as-built plans and specifications and a bill of sale, the City agrees to accept the dedication of such completed portions of South Arsenal Road which conform to the approved plans and this Agreement and thereafter maintain the same and maintain said dedicated portions. As a

condition of acceptance, JADA shall post a maintenance letter of credit (or bond, if required by the Illinois Department of Transportation) for a two (2) year period in lieu of a letter of credit or other security requirements in City ordinances.

JADA's completion of South Arsenal Road Improvements shall not be a prerequisite to the City's issuance of permits for grading, earthwork, site balancing, infrastructure installation, foundation, building construction, or similar permits for the Industrial Park and for its use and occupancy; provided, however, that substantial completion of that portion of South Arsenal Road fronting a particular building shall be a prerequisite to the City's issuance of occupancy permits for such building. For the purpose of the preceding sentence, "substantial completion" shall mean completion of the binder course layer and specifically excluding completion of the surface course layer, finish grading and landscaping.

Within thirty (30) days of the annexation of the Subject Property, JADA shall post a letter of credit in a form approved by the City Attorney and in conformance with this Agreement in an amount determined by the City Engineer to guarantee construction of South Arsenal Road.

JADA acknowledges that pursuant to the terms of the Adjacent Property Annexation Agreement that South Arsenal Road was to have been completed by October, 2007. JADA further acknowledges that such completion dates have not and will not be met. JADA shall indemnify and hold the City harmless from and against claim, cause of action, action, lawsuit, or any other matter brought against the City, its officers, agents or employees whether in equity, contract, tort or any other theory as a result of JADA not completing South Arsenal Road as provided in the Adjacent Property Annexation Agreement, including, but not limited to amounts of judgments, costs, expenses, reasonable attorney's fees and any other cost or expense.

In order to provide access to property commonly known as the Local 150 Training Facility on or before July 30, 2007, ProLogis shall construct an overlay of that portion of South Arsenal Road from Old Chicago Road to the west side of the entrance of the Local 150 Training Facility. The overlay shall conform to the specifications attached hereto as Exhibit S (the "Overlay Specifications"). Within thirty (30) days of the annexation of the Subject Property, ProLogis shall post a letter of credit in a form approved by the City Attorney on an amount approved by the City Engineer to guarantee completion of the overlay according to terms of this Agreement.

In order to provide temporary access to the aforesaid Local 150 Training Facility for a period not to exceed thirty (30) continuous days during calendar year 2007 for the purpose of providing Local 150 with the ability to move heavy equipment from Prairie View Road to the Local 150 Training Facility, JADA shall obtain a temporary right of ingress from Will County and its landfill operator, Waste Management, over a portion of the real estate owned by Will County and managed by Waste Management for said purpose.

JADA's obligations pursuant to this Section 7(E) are personal to JADA and are not the obligations of either ProLogis or other Owners who will be successors in title to all or any part of the Industrial Park.

Illinois Route 53 Improvements

Deleted: . ProLogis undertakes and agrees, at its sole expense (but inclusive of any grant funds ProLogis, JADA, any other Owner or the City may obtain for such purposes from either governmental bodies and/or private sector entities (including Will County, the Illinois Department of Transportation ("IDOT") and nearby landfill operators) (hereinafter, "3rd Party Highway Grants")), to commence or cause to be commenced the design of the following portions of the traffic infrastructure improvements described in that
- 15 -
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certain traffic study prepared by K-Plus dated 9/23/05 and to proceed or cause to proceed diligently thereafter with the construction of the same according to plans and specifications approved by the Illinois Department of Transportation ("IDOT"): (1) the widening of Illinois Route 53 to four lanes between South Arsenal Road and River Road, including the upgrade of related intersection improvements and including turn lane improvements, (2) a bicycle path along Route 53 extending for approximately _____ linear feet between _____ and _____ approximately _____ in width and constructed of _____ on public right-of-way made available for such purpose by either the City or IDOT provided that neither ProLogis, JADA, nor any Owner shall be responsible for acquiring or paying for any additional right-of-way required for a bicycle path; and (3) at such time as warrants are met interconnected traffic signals at the intersections of Illinois Route 53 and South Arsenal Road, and at the intersection of Illinois Route 53 and River Road. (The work described in subparts (1), (2) and (3) of the preceding sentence is hereinafter collectively referred to as the "Route 53 Traffic Infrastructure Improvements" .) Sidewalks are not required on Route 53. The Route 53 Traffic Infrastructure Improvements shall be completed at about such time that Four million (4,000,000) square feet of building floor area is constructed within the Industrial Park and certificates of occupancy have been issued for the same (hereinafter, the "Four Million Square Foot Benchmark"). ProLogis shall cause the initiation of the design of Route 53 Traffic Infrastructure Improvements and request for a construction permit to be filed with IDOT by such time that three million (3 million) square feet of building floor area has been constructed in the Industrial Park and certificates of occupancy shall have been issued for the same (the "Three Million Square Foot Benchmark"). The failure of ProLogis to fully construct the Route 53 Traffic Infrastructure Improvements by the time the Four Million Square Foot Benchmark is achieved shall comprise

Deleted: grounds for denying any further City permits related to the construction or occupancy of buildings in the Industrial Park beyond the Four Million Square Foot Benchmark, until such time that the Route 53 Traffic Infrastructure Improvements are completed, provided that grading, site work and infrastructure permits shall continue to be issued by the City. The City's sole and exclusive remedy for the failure of ProLogis to cause the initiation of the design of the Route 53 Traffic Infrastructure Improvements and request a construction permit by the Three Million Square Foot Benchmark and to fully construct the Route 53 Traffic Infrastructure Improvements by the time the Four Million Square Foot Benchmark is achieved shall be to deny City permits related to the construction of buildings in the Industrial Park pursuant to the preceding sentence.¶

It shall be the responsibility of the City to obtain, at ProLogis' expense, all off-site real estate, easements or other interests in off-site real estate necessary to accomplish the Route 53 Improvements (excluding the aforesaid bicycle path), potable water, sanitary sewer, storm sewer and other utility services, and to acquire promptly any such off-site real estate, easements or other interests in off-site real estate by exercise of its power of eminent domain if necessary to acquire the same if they cannot be acquired through negotiations. The City, at ProLogis' expense, agrees to exercise its power of eminent domain to acquire any real estate easements or other interests in real estate reasonably required to implement public infrastructure related to the Preliminary Site Plan or this Agreement, if the aforesaid cannot reasonably be acquired through negotiations. ProLogis shall reimburse the City for all of its reasonable expenses associated with any easement or property acquisition whether by eminent domain or otherwise not advanced or reimbursed by another unit of government (such as IDOT), including appraisers, expert witness costs, reasonable attorneys' fees and the cost of any judgment or settlement in eminent domain or¶ negotiated acquisitions where the settlement in question has been approved by ProLogis.

Deleted: Notwithstanding anything contained in this Agreement to the contrary, the City agrees, if required by either IDOT or by the terms of Third Party Highway Grants, to serve as either the applicant for Route 53 Traffic Improvements and/or the contracting party for the same, the City and ProLogis shall cooperate in facilitating the City's role as applicant, sponsor, or contractor, provided ProLogis shall post either a bond or letter of credit with IDOT (whichever is required by IDOT) in such amounts and at such times required by IDOT, with the understanding that the City will cooperate with the return of the same or the return of unexpended funds upon completion of the Route 53 Traffic Infrastructure Improvements. The contractor constructing the Route 53 Traffic Improvements shall be required to carry commercially reasonable public liability insurance consistent with the Insurance Specifications attached hereto on Exhibit O and made part hereof naming the City as a primary, non-contributing additional insured, and the civil engineer designing the Route 53 Traffic Infrastructure Improvements shall be required to carry commercially reasonable errors and omissions insurance. Subcontractors working on the Route 53 Traffic Infrastructure Improvements shall name the City as a primary, non-contributing additional insured on their public liability policies. Nothing contained herein shall be deemed to waive the tort immunity available at law to the City. ProLogis shall use best efforts to cause the civil engineer designing the Route 53 Traffic Infrastructure Improvements to certify its plans to the City. The City shall diligently perform any of its obligations with respect to the Route 53 Improvements. Provided that ProLogis has made all necessary submittals required by IDOT, IDOT's failure to issue warrants for the installation of any of the traffic signals described above shall not be deemed a failure by ProLogis to implement the anticipated level of Route 53 Traffic Infrastructure Improvements described above at the Four Million Square Foot Benchmark. ProLogis shall not be held to be in breach or in default of this Agreement due to unreasonable

(E) The City and JADA will cooperate with efforts to obtain 3rd Party Highway Grants to fund Route 53 Traffic Infrastructure Improvements. Access. The City will allow up to three (3) vehicular access points from Prairie View Road into the Industrial Park, in addition to any access to County roads provided by Will County. Subject to City Engineer approval, the City will allow up to eight (8) full intersection access points (i.e., eight (8) sets of ingress lanes and egress lanes) from South Arsenal Road into the Industrial Park (in addition to the existing intersection of South Arsenal Road and Prairie View Road). ~~Each full intersection~~

Deleted: delays by IDOT or the failure of the City to perform its obligations pursuant to this Section 7(F), however, the City shall not be obligated to issue building or occupancy permits as set forth above.

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Deleted: Except as set forth in this Agreement or as may be required by IDOT, ProLogis shall not be responsible for any additional or off-site roadway improvements.¶
Notwithstanding anything contained herein to the contrary, ProLogis' obligations for the Route 53 Traffic Infrastructure Improvements are personal to ProLogis and are not the obligations of either JADA or other Owners who will be successors in title to all or part of the Industrial Park, provided that in the event ProLogis elects at any time prior to April 1, 2010 that it will not obtain title to either Phase II or Phase III of the Industrial Park, ProLogis shall be relieved of its obligations under this Agreement for the Route 53 Traffic Infrastructure Improvements and JADA shall thereupon be responsible for the same, which responsibility will be personal to JADA and not the obligation of either ProLogis or other Owners who will be successors in title to all or any portions of the Industrial Park, provided however that the City's remedy of withholding certain permits pursuant to the first paragraphs of this Section 7(F) shall apply to the entire Industrial Park in the event the Route 53 Traffic Infrastructure is not completed by the Four Million Square Foot Benchmark.¶

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~~centerline access point must be at least three hundred fifty (350) feet apart unless otherwise mutually agreed between the City and ProLogis.~~

(F) Old Chicago Road. On or before the issuance of building permits for the second phase of the three phases of the Industrial Park shown on Exhibit F, ProLogis shall complete the improvements to Old Chicago Bank as set forth on Exhibit P attached hereto (the "Old Chicago Road Improvements") within thirty (30) days of the annexation of the Subject Property ProLogis shall post a letter of credit acceptable to the City to guarantee construction of the Old Chicago Road Improvements. The City shall execute any documents, including permits and applications reasonably necessary to obtain Will County approvals to construct the Old Chicago Road Improvements. The contractor constructing the Old Chicago Road Improvements shall be required to carry commercially reasonable public liability insurance consistent with Exhibit O, attached, naming the City as a primary non-contributing additional insured, and the civil engineer (if any) designing Old Chicago Road Improvements shall be required to carry commercially reasonable errors and omissions insurance. Subcontractors working on the Old Chicago Road work shall name the City as a primary, non-contributing additional insured on their public liability policies. Nothing contained herein shall be deemed to waive the tort immunity available at law to the City. ProLogis shall use best efforts to cause the civil engineer designing the Old Chicago Road Improvements, if any, to certify its plans to the City.

Section 8. South Arsenal Road Easement Dedications.

JADA and the Owners shall, by plat of dedication or other means or method of conveyance, dedicate to the City all necessary rights of way required for widening the South Arsenal Road and for the purpose of providing non-exclusive utility easements. JADA represents that no such rights of way are required from third parties.

Section 9. Developments in Phases.

The parties recognize and agree that the nature and scale of the Industrial Park preclude a commitment by Owners to develop on any fixed and determined schedule. Accordingly, the Industrial Park may re-develop over an extended period of time, and any limitations under the City's municipal code (including without limitation the City's zoning and subdivision ordinances) which may require either the initiation or the completion of construction under the Preliminary Site Plan within a certain time frame or either the initiation or completion of construction as a condition to the continued effectiveness of other City approvals shall not be applicable. The City acknowledges that may apply for and obtain permits in phases for grading, earth work, site balancing, infrastructure installation, foundation, and similar purposes which in some instances will, and in other instances will not, pertain to the imminent construction of a particular building.

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Section 10. Landscaping/Screening.

The landscaping program and required screening for the Industrial Park shall comply with the I-4 Zoning District Regulations and the Landscape Plan included as part of the Preliminary Site Plan. The landscaping shall be installed in phases as weather permits in conjunction with the buildings on each approved final site plan.

Section 11. Shared Truck Courts.

Impervious surfaces (including parking, shared truck courts and trailer storage areas) shall be allowed in the front, side, and rear yards of said yards required per the I-4 Zoning District Regulations. An Owner may incorporate cross-access and reciprocal use easements across lot lines for shared truck courts, shared driveways and utilities in either the applicable plats of subdivision or by separately recorded instruments.

Section 12. Tax Abatement Provisions.

Simultaneously with the City's adoption of the ordinances described above in Section 6, the City shall adopt proper, valid and binding ordinances (A) authorizing the real estate tax abatements described in the City of Wilmington/JADA/ProLogis tax abatement agreement attached hereto as Exhibit I and made part hereof (the "City Tax Abatement Agreement") and (B) authorizing the City to enter the City of Wilmington/JADA/ProLogis/City of Wilmington Community Unit School District 209U tax abatement agreement attached hereto as Exhibit I-1 attached hereto and made part hereof (the "School District Tax Abatement Agreement"), which set forth the terms and conditions for tax abatements for the Industrial Park.

The City agrees to cooperate with efforts among JADA, ProLogis, and the local school district to arrive at a mutually agreeable real estate abatement agreement in the form attached as Exhibit I-2.

Section 13. Foreign Trade Zone.

The City agrees to cooperate with efforts among JADA, ProLogis, the County of Will and other governmental entities to obtain Foreign Trade Zone designation for the Industrial Park.

Section 14. Compliance with Comprehensive Plan.

The City acknowledges that the Preliminary Site Plan approved in this Agreement is consistent with, and in furtherance of, the City's Comprehensive Plan.

Section 15. Approval of Preliminary and Final Subdivision Plats.

An Owner may apply for subdivision plat approval from time to time, provided that the City shall honor the exemptions from platting requirements set forth in the Illinois Plat Act. For example, in the event JADA's initial conveyance of a portion of the Industrial Park is the "Potential Initial Take-Down Area" shown on Exhibit J, attached hereto and made part hereof:

(A) The conveyance would be exempt under the Illinois Plat Act, and would not require either preliminary or final subdivision approval by the City of Wilmington;

(B) Neither preliminary nor final subdivision plat approval would be a prerequisite to obtaining grading, earth work, site balancing, infrastructure installation, foundation, building or occupancy permits or similar permits with respect to the Potential Initial Take-Down Area or its occupancy and use.

(C) Whether or not an exemption is available under the Illinois Plat Act, in addition to the site plan review provisions of the 1-4 Rezoning Regulation, the Owner shall comply with all the technical review (including review of topographical information, detention and storm water management plans) (whether temporary or permanent, at ProLogis' election), and utility plans, public improvements, and dedication requirements of the Subdivision Ordinance as modified by this Agreement.

(D) Whether or not conveyance of a parcel is exempt from the platting requirements under the terms of the Illinois Plat Act, grading, earth work, site balancing, infrastructure installation, foundation and building permits or similar permits shall nonetheless be issued by the City and building construction may commence before the approval of either a preliminary or final subdivision plat, provided the City has (i) specifically only as to the building permit, the City has issued Final Site Plan approval pursuant to said 1-4 Zoning District Regulations; (ii) reviewed and approved engineering essential for the work in question pursuant to applicable City ordinances; and (iii) reviewed and approved all other submittals necessary for the type of permit being requested pursuant to applicable City ordinances; (iv) there is reasonably adequate access (i.e., with a compacted gravel surface) to the building site for emergency vehicles; and (v) post any letters of credit . Final certificates of occupancy will not be issued in those instances where

the conveyance of the parcel in question is not exempt from the platting requirements of the Illinois Plat Act until such time that a final subdivision plat has been approved by the City. The City acknowledges and agrees that, in interpreting whether or not an exemption from the platting requirements set forth in the Illinois Plat Act exists, no new streets or easements of access shall be deemed to exist in connection with a proposed sale or conveyance of a portion of the Industrial Park, notwithstanding the creation of cross-easements between the portion being sold or leased and the portion being retained by a seller or lessor, provided that the land area to be sold or conveyed, prior to such sale or lease, previously was contiguous to a public road and will remain so after such sale or lease. If subdivision approval is requested by an Owner, the Planning and Zoning Commission shall complete its review and act upon all preliminary and final plats of subdivision within thirty (30) days after submittal of a complete set of documents which shall comply with this Agreement and all applicable ordinances and laws. The City shall convene a special meeting, at ProLogis' cost, if necessary and requested by ProLogis. The City acknowledges and agrees that an Owner may pursue simultaneous preliminary and final subdivision approval. Preliminary plats and final plats of subdivision shall be acted on by the City Council within thirty (30) days after action thereon by the Planning and Zoning Commission. Nothing herein shall be construed to require Planning and Zoning Commission or City Council approval of any plat or plan which does not meet the requirements of this Agreement, and all applicable City ordinances except as waived or modified pursuant to this Agreement. Preliminary plats or final plats of subdivision may be submitted in any size or at any time, and may be submitted for all, or any portion of the Industrial Park at an Owner's option, provided all certifications and information required by statute or ordinance are included thereon.

Notwithstanding any contrary provision of the Subdivision Ordinance or other Codes and Ordinances of the City, preliminary plat approval for any portion of the Industrial Park shall not expire for seven (7) years from the date of such approval.

Nothing herein shall require an Owner to subdivide any portion of the Industrial Park as a condition to development, construction, use or occupancy unless there is a conveyance of a fee interest in land causing a land subdivision and the subdivision is not exempt from platting requirements under the terms of the Illinois Plat Act, provided that this shall not eliminate compliance with the technical review, public improvement and dedication requirements of the Subdivision Ordinance.

Section 16. Soil Substitution.

An Owner shall have the right to employ generally accepted construction procedures, including but not limited to, soil substitution, caissons, trench footings or other measures, to insure buildability of any portion of the Industrial Park, approved in a written report by a certified soil engineer and subject to the reasonable approval of the City.

Section 17. Survival of Zoning Provisions.

The zoning map amendment, Preliminary Site Plan approval and Final Site Plan approvals granted pursuant to the I-4 Zoning District Regulations as well as the ordinance modifications described in Exhibit G, shall not terminate upon the expiration of this Agreement, but shall continue in effect unless thereafter amended in accordance with law.

Section 18. Compliance with Applicable Ordinances; Conflicts.

(A) Except as specifically provided in this Agreement, the Owners shall comply with all ordinances and regulations whether in effect now or hereafter amended which are not inconsistent with the Preliminary Site Plan or the provisions of this Agreement.

(B) No ordinance or regulation shall be applicable to the Industrial Park which shall have the effect of defeating the zoning or other entitlement granted pursuant to this Agreement, or which shall impair any obligation of the City or rights of an Owner under this Agreement, the I-4 Zoning District Regulations, and the approved Preliminary Site Plan and Final Site Plans.

(C) Owners may operate within the Industrial Park at all hours. Notwithstanding any other provision of City ordinances regulating or restricting hours of construction activity, contractors may conduct activity within the Industrial Park at all hours, except within five hundred (500) feet of any residential building where the City may impose reasonable restrictions.

(D) In the event of any conflict between the provisions of this Agreement and the exhibits hereto, and the ordinances, codes, regulations and resolutions of the City, the provisions of this Agreement and the exhibits hereto shall control.

(E) All City building codes, fire codes, subdivision ordinances and codes, and civil engineering requirements in City ordinances and regulations shall remain in effect as they currently exist (or as herein modified, waived or varied) insofar as they pertain to the Industrial Park for the first three (3) years of this Agreement, except if a revision is mandated and required by State, County, or Federal law, in which case Owner must comply to the extent of such required revisions subject to an Owner's right to object to, contest, or challenge such revisions. The City's Zoning Ordinance (including the I-4 Zoning District Regulations attached hereto as Exhibit E), Storm Water Management, Drainage and Flood Plain Protection Ordinances and related regulations as they currently exist (or as herein modified, waived or varied) shall likewise remain in effect insofar as they pertain to the Industrial Park for the entire Term of this Agreement (as set forth in Section 44 below), except if revision is mandated and required by State, County or Federal law, in which case Owner must comply to the extent of such required

revisions subject to an Owner's rights to object to, contest or challenge such revisions. In the event that the City hereafter amends any of its ordinances, codes or regulations, then and in such event, at Owner's election such amendments shall apply to such Owner's real property if less restrictive than the ordinances, codes or regulations in effect as of the date of the execution of this Agreement but only to the extent such amendment is not inconsistent with this Agreement or any approved plans.

Section 19. Storm Water Retention/Detention and Storm Sewers.

Storm water runoff emanating from the Industrial Park shall be controlled and managed in accordance with a detention system ~~to be constructed and installed in compliance with the~~ City storm water ordinance, as the same may be modified by Exhibit G to this Agreement provided the storm water detention, compensatory storage and related construction shall be in accordance with the U.S. Army Corps of Engineers requirements. The conceptual storm water ~~plan for the~~ shall be designed by Owner. The final system shall include all storm water management facilities, including on-site storm sewers and swales, if needed. The City shall approve all final engineering plans for storm water management if the design criteria, construction and maintenance of the storm sewers, swales and detention facilities are in accordance with all standards of the City storm water ordinance as modified by this Agreement. Silt removal and repairs required as a result of construction in the area for which any detention pond is built shall be the responsibility of the Owner.

All storm water management facilities including ponds, swales, structures, and conveyance facilities shall be owned and maintained by Owner. The City shall not be required to accept the public dedication of any storm water management facilities. At an Owner's option, title to such storm water management facilities areas and/or storm sewers and swales installed in

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any platted area or other portion of the Subject Property may be conveyed to a property owners' association. All right of ways conveyed to the City which will include stormwater conveyance lines shall retain an easement in favor of the Owner to maintain such lines.

Section 20. Electric, Telecommunications and Natural Gas Public Utilities.

The City agrees that telecommunications, electricity and natural gas utilities necessary or convenient to serve the Industrial Park may, at the option of an Owner, be provided by one or more non-governmental entities. The form of ownership of the telecommunications, electricity and natural gas facilities shall be at the discretion of an Owner, and any or all of such facilities may be owned or operated by an Owner, its designee or agent, or by one or more firms, corporations or other entities designated by an Owner or contracted with by an Owner to design, construct and operate such utilities.

Section 21. Water Distribution Systems: Sanitary Sewer Facilities.

(A) Generally. Except for service lines to buildings or structures, sanitary sewer, potable water and related treatment and distribution facilities shall be owned and operated by the City.

(B) City Water and Sewer Capacity. The City represents and warrants to ProLogis that ~~after the water tower is operational~~ the City will have adequate ~~potable water resources and~~ waste water treatment plant capacity to meet the demands of the Industrial Park (1) if it is developed as warehouse and distribution facilities generally in accordance with the Preliminary Site Plan, and (2) based on the assumption that the total amount of the Industrial Park's demand for wastewater treatment shall not exceed 991 PE at full development. Subject to force majeure, on or before October 31, 2008, the City shall at its expense design, construct, complete and make

operational, an offsite new sanitary sewer treatment plant containing not less than 1.2 million

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gallon per day capacity, as well as all related on and off site sewer modifications and extensions (including necessary sanitary sewer piping so effluent will run by gravity to the plant from the new sanitary pipeline connected upstream from the existing lift station in Illinois Route 53), including without limitation the re routing of existing piping flow from the City's existing plant to its new plant. On or before October 31, 2007, the City shall at its expense maintain the water flow through the new water line along South Arsenal Road east of the new booster pumps along South Arsenal Road at a minimum flow of 1250 GPM @ 140 ft. TDH. The City shall, in addition, pay for the operation and maintenance of the sanitary lift station and water booster pumps located in proximity to South Arsenal Road. The booster pumps have been constructed by JADA, at its sole expense and are operational. On or before October 31, 2007, JADA shall cause the lift station and booster pumps to comply with Exhibit L attached hereto. The City does not represent or warrant that water capacity pressure or flows would be sufficient for fire fighting or suppression purposes (insofar as large scale industrial and warehouse buildings often require their own additional fire fighting and fire suppression reserve water tanks and booster pumps), or for landscape purposes in the event of force majeure as defined below in Section 66, or that landscape watering restrictions will not be applied to the Industrial Park in the same manner applied to similar properties in the City.

The City covenants and agrees that it will provide sewer capacity for the benefit of the Industrial Park in such new plant or additions thereto to accommodate the contemplated development of the Industrial Park as a warehouse and distribution facilities per the Preliminary Site Plan. The City further represents and warrants that the capacity described in this Section 21(B) will be available to the Industrial Park and that there is no administrative, judicial or any legislative action pending or threatened but would result in a limitation.

Until such time as the sanitary sewer gravity line eliminates the lift station on Rt. 53, if approved by the IEPA, ProLogis at its election issued to the City in writing shall be permitted to utilize a sanitary sewer surge tank (the "Surge Tank") to be located near the Illinois Route 53 lift station. The Surge Tank is for the purpose of temporarily holding and detaining sewage until off-peak hours when the lift station is capable of processing sewage from the Industrial Park and shall be sized to hold up to 650 PE per 24-hour period. The City has designed the Surge Tank and accessory facilities, which it shall provide to ProLogis for its review and approval prior to its submission by the City to the Illinois Environmental Protection Agency ("IEPA") and Illinois Department of Transportation ("IDOT") for governmental approval. The design shall not be submitted to IEPA and IDOT unless the City is requested to do so by ProLogis in writing. If submitted, the City shall utilize best efforts to expedite IEPA and IDOT approval of said plans and specifications for the Surge Tank and accessory facilities, and at the written election of ProLogis thereafter to diligently proceed to construct, install and thereafter repair, maintain and replace (as necessary) the same and to modify any ancillary sewage facilities or lines to enable the lift station to increase the cumulative 24-hour PE capacity of the existing lift station and outdoor piping sewer plant on an interim basis by no fewer than 650 PE's to serve the Industrial Park. The City shall complete construction of the Surge Tank and the ancillary work in operational condition within 60 days of IEPA and IDOT approval. The Surge Tank will be designed and constructed at ProLogis' expense, and thereafter operated by the City at the City's expense; provided that ProLogis' obligation to the City shall be strictly limited to the City's actual out-of-pocket expenses without mark-up for overhead or administrative fees.

(C) JADA Water and Sewer Connections; Subsequent Extensions. JADA has

constructed and completed extensions of the City's water main and sewer main to the Industrial

Park along South Arsenal Road east of Prairie View Road in accordance with the plans and specifications previously approved by the City. The City has heretofore executed all necessary permits and other permissions necessary for the construction of the aforesaid water main and sanitary sewer extensions, and has accepted or will accept the dedication of the entirety of the same by JADA to the City promptly upon completion and shall cause said mains to become operational.

Subsequent extensions of the potable water and sanitary service lines within the Industrial Park in conjunction with the future development thereof shall be performed at the expense of the Owners, and the plans and specifications for, and the location of, such subsequent extensions shall be subject to the reasonable approval of the City in accordance with normal procedures under the City's subdivision regulations and other applicable codes.

~~In the event the City, at its expense, on or before April 1, 2017 proceeds to design and commence the construction of a new sixteen (16") inch water main under the Kankakee River, which directly serves the Industrial Park and other property, ProLogis shall contribute to the City the sum of Four Hundred Thousand Dollars (\$400,000.00) at the time the City is in possession of all necessary approvals and permits to construct the water main, has bid the work and entered contracts for the same (hereinafter, the "Triggering Event"), with said Four Hundred Thousand Dollar (\$400,000.00) contribution to comprise the sole contribution of ProLogis and the Industrial Park toward said cost. Within thirty (30) days of annexation of the Subject Property, ProLogis shall post a letter of credit to secure ProLogis' aforesaid obligation to pay said Four Hundred Thousand Dollars (\$400,000.00) on the terms set forth herein, provided that in the event the Triggering Event has not occurred on or before April 1, 2012, ProLogis may substitute a bond for said letter of credit. In the event the Triggering Event does not occur pursuant to the~~

~~preceding sentence on or before April 1, 2017, ProLogis' obligation to make the aforesaid \$400,000.00 contribution will cease and its letter of credit or bond (as the case may be) will be promptly returned to ProLogis by the City. Except as set forth in this Section 7(C), the City covenants and agrees that no additional off-site sanitary sewer or water main extensions, no oversizing of water or sewer mains (or related financial contributions), and no additional water or sewer utility improvements (or related financial contributions) are required by the City from either JADA or ProLogis in connection with the Industrial Park. If the City requests that an Owner oversize any sanitary sewer or water main extension and such Owner agrees in its sole discretion to construct such oversizing then as a condition thereof, the City shall enter into a recapture agreement with the Owner to permit the Owner to recover the incremental increase in hard and soft costs.~~

If the water supply to the Industrial Park is not sufficient to meet applicable fire suppression codes (the "Fire Codes"), then ProLogis and JADA, at their cost, will cause such fire suppression systems to comply with the Fire Codes. Except as set forth in this Section 21(C), the City covenants and agrees that no additional off-site sanitary sewer or water main extensions, no oversizing of water or sewer mains (or related financial contributions), and no additional water or sewer utility improvements (or related financial contributions) are required by the City from either JADA or ProLogis in connection with the Industrial Park. If the City requests that an Owner oversize any sanitary sewer or water main extension and such Owner agrees in its sole discretion to construct such oversizing then as a condition thereof, the City shall enter into a recapture agreement with the Owner to permit the Owner to recover the incremental increase in hard and soft costs."

(b) Notwithstanding to the contrary contained in the Annexation Agreement, ProLogis is released from the obligation to deliver a letter of credit or bond in favor of the City in the amount of \$400,000 to secure construction of a sixteen inch water main under the Kankakee River.

(D) Water's Edge Recapture Agreements; No Additional Recapture, Etc. Reference is made to the Recapture Agreement dated September 3, 2002 by and between the City and Waters Edge, LLC (herein called the "Water's Edge Recapture Agreement"), a copy of which having been recorded in Will County, Illinois on October 9, 2002 as document number R2002167826.

Pursuant to that certain Settlement Agreement dated October 11, 2005 by and among Waters Edge, LLC, the City and JADA (the "Water's Edge Settlement Agreement", a true, correct and complete copy of which is attached hereto as Exhibit M) an agreement has been reached on how to determine the amount to be paid to Waters Edge, LLC in full satisfaction of all payments due under the Recapture Agreement with respect to the annexation, platting or development of the Industrial Park or with respect to any water main or sanitary sewer tap-ons or connections made for the benefit of use of the Industrial Park. Apart from ProLogis' pro-rata share of recapture payments under the Water's Edge Settlement Agreement, the City will not

seek to collect any additional sums from Owners under the Water's Edge Recapture Agreement with respect to the Industrial Park.

Subject to the terms of Section 31 below, the City covenants and agrees that there are no other recapture agreements, special assessments or special service area assessments applicable to the Industrial Park and that provided ProLogis actually completes construction of all improvements contemplated by this Agreement, the City will not adopt or approve any additional recapture agreements. The City will not adopt any special assessments or special service area assessments against any portion of the Industrial Park unless requested by an Owner.

Section 22.

Water Tower, Water Storage, Capacity, and Distribution Improvements

ProLogis shall construct a new water storage, capacity, and distribution improvements 1,000,000 gallon water tower to serve the Industrial Park and other real property outside the Industrial Park (the "Water Tower"), based on the design recommended by the City Engineer and Water Superintendent to meet the demand for potable water service which will include fire safety/suppression on demand system which shall be permitted as a requirement based on the type of building and/or use by the owner. ProLogis shall also pay to the City of Wilmington upon execution of this Amended Annexation Agreement the sum of \$400,000.00 to be used for anticipated costs to the City which may include design, engineering, and permitting costs for a Kankakee River crossing and/or the construction of an insulated ground storage water tank on the ProLogis site at the pump station. The Water Tower shall be constructed and painted in conformance with the general specifications attached hereto as Exhibit N and

~~made part hereof. ProLogis shall paint the Water Tower with branding logos for the City and ProLogis. Construction of the Water Tower Improvements, together with a connection to the existing waterline along South Arsenal Road shall be completed by ProLogis not later than the date on which the first permanent certificate of occupancy is issued for the first building in the Industrial Park. ProLogis shall cause the contractor warranties pertaining to the construction of the Water Tower Improvements to run to the benefit the City. ProLogis shall defend, indemnify and hold City and City-owned property harmless from mechanics' liens claims arising from ProLogis' construction of the Water Tower Improvements. In addition, ProLogis shall defend, indemnify and hold harmless the City from and against claims, demands, and suits for personal injury and damage to property filed against the City with respect to ProLogis' initial construction of said Water Tower Improvements. ProLogis shall, at no cost to the City, dedicate the Water Tower Improvements to the City by means of a bill of sale upon its completion, and the City shall maintain the Water Tower Improvements at its expense thereafter. JADA will convey real estate of reasonable size and dimension immediately underlying the Water Tower Improvements to the City pursuant to Section 36, below, and, in addition, provide necessary public utility and access easements within thirty (30) days of a written request from the City. Notwithstanding the provisions of Section 47, the duty and obligations of Prologis to construct the Water Improvements shall remain even after the conveyance of all of Prologis' interest in the Industrial Park.~~

Deleted: Water Tower.

~~ProLogis shall construct a new 1,000,000-gallon water tower to serve the Industrial Park and other real property outside the Industrial Park (the "Water Tower"). The Water Tower shall be constructed and painted in conformance with the general specifications attached hereto as Exhibit N and made part hereof. ProLogis shall paint the Water Tower with branding logos for the City and ProLogis. Construction of the Water Tower, together with a connection to the~~

Deleted: ¶

~~existing waterline along South Arsenal Road shall be completed by ProLogis not later than the date on which the first permanent certificate of occupancy is issued for the first building in the Industrial Park. ProLogis shall cause the contractor warranties pertaining to the construction of the Water Tower to run to the benefit the City. ProLogis shall defend, indemnify and hold City and City owned property harmless from mechanics' liens claims arising from ProLogis' construction of the Water Tower. In addition, ProLogis shall defend, indemnify and hold harmless the City from and against claims, demands, and suits for personal injury and damage to property filed against the City with respect to ProLogis' initial construction of said Water Tower.~~

~~ProLogis shall, at no cost to the City, dedicate the Water Tower to the City by means of a bill of sale upon its completion, and the City shall maintain the Water Tower at its expense thereafter. JADA will convey real estate of reasonable size and dimension immediately underlying the Water Tower to the City pursuant to Section 36, below, and, in addition, provide necessary public utility and access easements within thirty (30) days of a written request from the City.~~

Section 23. Wetlands Mitigation.

The Industrial Park presently contains 61 separate wetland areas, which total approximately 26.92 acres. The Preliminary Site Plan contemplates impacting approximately 12.37 acres of wetlands, which will be mitigated onsite. Section 404 permits are presently being processed with the U.S. Army Corps of Engineers to permit the aforesaid, which, once obtained, will govern impacts to wetlands with the result that no wetlands-related approvals will be required from the City. Once the Section 404 permits are obtained, an Owner may, in accordance with the terms of such permit, mitigate or fill any wetland or flood plains in the Industrial Park or may use existing wetlands for mitigation or storm water detention purposes to the extent permitted by the Illinois Environmental Protection Agency, the U.S. Army Corps of Engineers, the United States Environmental Protection Agency, FEMA or any other state or federal agency having jurisdiction.

Section 24. Flood Plains.

More than one flood plain currently impacts the Industrial Park. In connection with development of the Industrial Park, the flood plains will be relocated outside the proposed building footprints to locations denoted as comparable storage shown on the Preliminary Site Plan at a one to one compensation ratio. The building finished floor elevations will be at least

one foot above the 100 year flood plain elevation. The compensatory storage and flood plain areas may include Secondary Roadways in which the depth of the flooding will not exceed 12" at the proposed 100 year flood elevation. The City shall reasonably cooperate, including but not limited to execution of applications and consent forms, with applications to the Federal Emergency Management Agency ("FEMA") for CLOMAR/LOMAR map amendments and to other agencies having jurisdiction to allow development of the Industrial Park as described above.

Section 25. Building Permits.

Provided that a final site plan has been approved for a particular site, the City shall issue building permits for building construction within twenty (20) business days after application, subject to the other provisions of this Agreement, and provided every application shall be complete in accordance with all applicable City codes and ordinances except as otherwise herein provided. All applicable building permit fees shall be paid at the time of building permit issuance. Building permit issuance, after submission of complete applications, shall be delayed beyond twenty (20) business days only for events beyond the reasonable control of the City. The City covenants and agrees that no architectural or aesthetic review approval process either currently applies or shall during the Term of this Agreement apply to the Industrial Park except as explicitly set forth in the I-4 Zoning District Regulations. Notwithstanding anything contained in the I-4 Zoning District regulations to the contrary, the City shall approve any proposed architectural elevations for development within the Industrial Park that is materially consistent with the "Sample Architecture" attached hereto as Exhibit K and made part hereof.

It is understood and agreed that an Owner may apply for and obtain separate permits for mass grading, earth work, site balancing, and infrastructure installation for all or any portion of a

site, whether or not performed in conjunction with a building permit for a particular structure or use and whether or not subdivision approval has been obtained, provided that subject to the terms of this Agreement (i) the Owner posts any letter of credit as is normally required for mass grading work under applicable City codes, and (ii) all applicable requirements are satisfied for soil erosion control and other matters required by ordinance. The City shall issue permits for the aforesaid within twenty (20) business days after application, subject to the other provisions of this Agreement and provided every application should be complete in accordance with applicable City codes and regulations except as herein provided. All applicable permit fees shall be paid at the time of issuance. Issuance shall be delayed beyond twenty (20) business days only for events beyond the reasonable control of the City.

The City agrees to work cooperatively with Owners to issue permits in phases for the various elements of construction of any particular building or improvement, so as to accommodate the "design-build" method of construction and project management.

Section 26. Stockpiles.

The City agrees that, subject to the reasonable erosion control requirements of City ordinances, material stockpiles may be located on any area of the Industrial Park so long as the stockpile is at least five hundred (500) feet north of South Arsenal Road, to be removed after a reasonable time period not to exceed the later of either seven (7) years from the date of commencement of construction or the date on which 85 percent of the buildings to be built on the Industrial Park have been substantially completed, unless an extension is agreed to by the City. All material stockpiles may consist of soil, crushed concrete or crushed asphalt only.

Section 27. On and Off-Site Easements.

At the time of approval of any final plat of subdivision for any portion of the Industrial Park, as applicable, or within ninety (90) days from the commencement of building construction on any portion of the Industrial Park, as applicable, Owners shall grant to the City all non-exclusive easements reasonably necessary for the provision of any City services to such parcels and nearby parcels or platted areas including sanitary, sewer, water, storm sewer, or other utilities provided such easements do not materially interfere with the implementation of the Preliminary Site Plan. No certificate of occupancy shall be issued for the parcel in or parcels in question until such time as the easements are granted. All such easements to be granted shall name the City and/or other appropriate entities designated by the City as grantee thereunder.

Section 28. Occupancy Permits.

No occupancy permit shall be issued by the City for any building prior to the completion by Owner of the required public improvements required for the building for vehicular access and utility services reasonably associated with said building, except for the final surface course or lift for the streets (in the case of asphalt pavement), and except for street lighting, spreading black dirt, and punchlist items, exterior painting, landscaping (given weather related delays) (if required) of any right-of-way or storm water detention or retention areas, subject to the provisions of Section 39 of this Agreement, below, providing for the issuance of temporary occupancy certificates. Letters of credit shall be posted for such punch list items.

Section 29. Utility Improvements.

Except where existing above ground facilities are utilized, all electricity, telecommunications and cable television lines shall be installed either underground at Owner's

option. The location of all utilities shall be at Owner's option so long as the same shall not prevent implementation of the Preliminary Site Plan.

Section 30. Public Infrastructure.

All storm sewers and related improvements (excluding storm water management facilities) shall be promptly accepted (or approved in the case of facilities not to be conveyed or dedicated to the City) by the City when complete.

Upon acceptance of any public infrastructure, the City will authorize a reduction in the letter of credit based upon the cost of installation of such public improvements.

Notwithstanding any other provisions of City ordinance or regulations, sodding of detention areas, parks, green spaces or other open space shall not be required. Sod shall also not be required in connection with any landscaping obligations under this Agreement or pursuant to City ordinance. Any reasonably recognized method of seeding on the Industrial Park may be used, as well as the use of natural tall grass where designated by the Landscape Plan.

Except as herein provided, upon acceptance of any public improvements, maintenance letters of credit shall be as set forth in City ordinances.

Other city public improvements along public streets, including but not limited to, right-of-way improvements, shall be accepted by the City when complete for the building associated with the designated portion of the Industrial Park.

Section 31. Recapture Agreements.

The City acknowledges and agrees that while it is unwilling to issue building permits within the Industrial Park but for the commitment to construct public infrastructure set forth in this Agreement, certain of the public infrastructure to be constructed by ProLogis under the terms of this Agreement is not specifically and uniquely attributable to either ProLogis or to the

Industrial Park, but rather comprise regional improvements which benefit real estate other than the Industrial Park owned by parties other than ProLogis (hereinafter, "Third Party Owners"). Accordingly, simultaneously with the City's adoption of the ordinances described above in Section 6, the City shall adopt an ordinance authorizing the City's execution and delivery of the Recapture Agreement with ProLogis attached hereto as Exhibit R and made part hereof, which Recapture Agreement among other matters sets forth the recapture obligation for each public improvement for each respective Third Party Owner and their respective properties. The City agrees to take all steps required by law to adopt and record the Recapture Agreement with the County Recorder of Deeds. In the event any improvement subject to recapture under the Recapture Agreement is not constructed by ProLogis or JADA as applicable at the cost of ProLogis or JADA as applicable (subject to 3rd Party Highway Grants) pursuant to the terms of this Agreement, the Recapture Agreement will be amended accordingly and equitably to reflect who is entitled to recapture and what portions of the Industrial Park are required to equitably contribute on the basis of their respective acreage.

Section 32. Tree Removal and Replacement.

Owners shall not be restricted from removing any trees in the excavation or grading of the Industrial Park, or in the construction of any improvements thereto. The City shall not require either tree surveys or tree removal permits. Owners shall not be required to provide replacement trees for any tree removed during construction. Provided, however, the Owners shall comply with the Landscape Plan.

Section 33. Certain Warranties and Representations.

(A) JADA represents and warrants to the City as follows:

- (1) JADA is the legal title holder and owner of record and ProLogis is the contract purchaser of the Industrial Park identified as Exhibit C;
- (2) JADA has full power and authority to execute this Agreement and bind the Industrial Park as herein provided;
- (3) that the officers of JADA executing this Agreement represent and warrant that they have been lawfully authorized to execute this Agreement on behalf of JADA and that JADA is lawfully organized and in good standing under all applicable state laws;
- (4) that there is no litigation pending by or against JADA that would substantially impair its ability to perform its obligations contemplated by this Agreement; and
- (5) that Exhibit M is a true, complete and correct copy of the Water's Edge Settlement Agreement.

(B) ProLogis represents and warrants to the City as follows:

- (1) ProLogis is the contract purchaser of the Industrial Park identified in Exhibit C;
- (2) ProLogis proposes to develop the Industrial Park in a manner contemplated in this Agreement, subject to market conditions;
- (3) ProLogis has full power and authority to execute this Agreement as herein provided;
- (4) ProLogis has provided the legal descriptions of the Industrial Park set forth in this Agreement and the attached exhibits and that said legal descriptions are accurate and correct.

- (5) That officers of ProLogis executing this Agreement represent and warrant that they have been lawfully authorized to execute this Agreement on behalf of ProLogis and that ProLogis is lawfully organized and in good standing under all applicable state laws; and
 - (6) That there is no litigation pending by or against ProLogis that would substantially impair its ability to perform its obligations contemplated by this Agreement.
- (C) The City represents to JADA and ProLogis as follows:
- (1) The City represents and warrants that the Mayor and Clerk of the City have been lawfully authorized by the City Council to execute this Agreement;
 - (2) The City further represents and warrants that it has given or caused to be given and published or caused to be published all required notices required by law to be given or published in connection with this Agreement or any other action of the corporate authorities required to be taken as a precondition to execution of this Agreement or annexation and zoning of the Industrial Park (with the exception of the zoning notices mailed to taxpayers of record in the vicinity, which were issued by ProLogis), and further represents and warrants that all public hearings required in connection with this Agreement and the annexation and zoning of the Industrial Park have been held;

- (3) There is no litigation pending by or against the City that would substantially impair its ability to perform its obligations contemplated by this Agreement;
- (4) that Exhibit M is a true, complete and correct copy of the Water's Edge Settlement Agreement.

Section 34.

~~**Fees For Building Permits to Include Engineering and Plan Review.**~~

~~JADA or ProLogis, as the case may be, shall pay all building permit fees.~~

~~The City agrees that in the event it retains an outside IBC code consultant to assist the City in reviewing and issuing permit applications and plans, in conducting inspections, and in issuing all certificates of occupancy as provided in this Agreement, said consultant shall be mutually acceptable to the City and ProLogis and shall serve at the City's expense.~~

~~The following costs shall be excluded from the computation of plan review and inspection fees otherwise payable pursuant to applicable City ordinances if determined on a percentage basis:~~

- ~~(a) earth work, mass excavation and grading;~~
- ~~(b) stone backfill and trenches;~~
- ~~(c) parkway improvements, including
 - ~~(i) topsoil and~~
 - ~~(ii) trees, sod or seed; and~~~~
- ~~(d) landscaping for detention/retention areas.~~

~~ProLogis shall reimburse the City for its actual out of pocket costs associated with such reviews as provided in a d above. The City shall not utilize either permitting procedures and fees or occupancy certificate procedures and fees as a means to impose either Impact Fees or~~

taxes in violation of Section 35, below.

Section 35. Annexation Fees and Other Exactions.

~~The City covenants and agrees that for the first ten (10) years of this Agreement no impact fees, annexation fees, or other fees or exactions either currently apply to the Industrial Park or will apply to the Industrial Park. "Impact fees" as used in this Agreement shall mean and include any fee, exaction or charge of any kind whatsoever imposed by the City or authorized by the City to be imposed by others as a condition of subdivision, site plan, or development approval, annexation, or as a condition to the issuance of permits or to the occupancy of structures. "Impact fees" shall include, without limitation of the foregoing, any fees, exactions or charges imposed based upon any purported impact of development on existing or proposed public services, facilities, parks, open space, schools, utilities (except sewer and water), utility lines, fire and police services, library services, roads, streets, or any other kind of municipal or governmental services or including capital improvements required or desired as a result of subdivision approval, site plan approval, development approval or annexation, provided, however, that water or sewer connection and use and consumption charges shall not be considered "impact" or "annexation" fees, provided and on the condition that they shall be similarly imposed on similarly situated users in the City. The City agrees that there shall be only one (1) water and one (1) sanitary sewer tap on or connection fee per building, regardless if the building features multiple taps to the water or sewer lines wherever located.~~

Subject to the terms of Section 41(F), below, the City shall neither propose nor adopt any special service area or special assessment, or levy any other special taxes applicable to the

Deleted: Fees For Building Permits to Include Engineering and Plan Review.

~~¶
The City agrees that in the event it retains an outside IBC code consultant to assist the City in reviewing and issuing permit applications and plans, in conducting inspections, and in issuing all certificates of occupancy as provided in this Agreement, said consultant shall be mutually acceptable to the City and ProLegis and shall serve at the City's expense.¶
The following costs shall be excluded from the computation of plan review and inspection fees otherwise payable pursuant to applicable City ordinances if determined on a percentage basis:¶
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stone backfill and trenches;¶
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parkway improvements, including¶
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topsoil and¶
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trees, sod or seed; and¶
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landscaping for detention/retention areas.¶
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ProLegis shall reimburse the City for its actual out of pocket costs associated with such reviews as provided in a-d above.¶
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¶
- 42 -¶
- - - Section Break (Next Page). - - -
The City shall not utilize either permitting procedures and fees or occupancy certificate procedures and fees as a means to impose either Impact Fees or taxes in violation of Section 35, below.¶~~

~~Industrial Park during the Term of this Agreement without the written consent of affected Owners.~~

No City enacted real estate transfer tax shall be applicable to the Industrial Park during the Term of this Annexation Agreement in an amount which exceeds the amount applicable to the transfers of residential real estate.

No new taxes, whether adopted pursuant to the City's home rule powers or otherwise, shall be enacted by the City during the Term of this Agreement unless generally applicable to similar properties throughout the City. The City further agrees not to charge or impose any tipping fees, terminal fees or other taxes or fees based upon container or, truck trailer or truck activity in the Industrial Park.

Section 36. Conveyance, Dedication and Donation of Real Estate.

Any conveyance, dedication or donation of real estate required or permitted by this Agreement to the City or other governmental authority pursuant to this Agreement shall be made in conformance with the following requirements and any other applicable provisions of this Agreement:

(A) Fee Simple Title. The conveyance, dedication or donation shall be of a fee simple title by Trustee's Deed, Special Warranty Deed or other appropriate instrument.

(B) Merchantable Title. Title to the real estate shall be good and marketable.

(C) Form and Contents of Deed. The conveyance, dedication or donation shall be by delivery of a good, sufficient and recordable deed, plat of dedication, or other appropriate dedication on a recorded plat of subdivision. The deed, conveyance or dedication may be subject to only:

- (1) covenants, restrictions and easements of record, provided the same do not render the real estate materially unsuitable for the purposes for which it is being conveyed, dedicated or donated;
- (2) the terms and conditions of this Agreement;
- (3) general taxes and special assessments for the year in which the deed, conveyance or dedication is delivered or made and for the prior year if the amount of prior year's taxes is not ascertainable at the time of delivery, conveyance or dedication;
- (4) such other exceptions as may be reasonably acceptable to the City or other grantee; and
- (5) proration of general and special taxes through the date of closing.

(D) Title Insurance. Grantor shall provide to grantee, not less than fourteen (14) days prior to the time for delivery of the deed, conveyance or dedication, a commitment for title insurance from Chicago Title Insurance Company or other title insurance company reasonably acceptable to the grantee. The commitment for title insurance shall be in usual and customary form subject only to:

- (1) the usual and customary standard exceptions contained therein;
- (2) subparagraphs (1), (2), (3) and (4) of paragraph C above; and
- (3) such other exceptions as may be reasonably acceptable to the City or other grantee.

The commitment for title insurance shall be in the amount of the grantor's land basis in the real estate being conveyed or dedicated. All title insurance charges shall be borne by Grantor.

(E) Taxes, Liens, Assessments. General taxes and all other taxes, special assessments, liens and charges of whatever nature affecting the real estate shall be paid currently prior to delivery of the deed, conveyance or dedication and presented at closing based on the last recent ascertainable tax bill, with the parties agreeing to re-prorate once actual tax bills are issued, with said obligation to survive closing. The grantee shall be responsible for applying for desired tax exemptions and shall be responsible for payment of such taxes attributable to the period from and after closing.

(F) Delivery of Deeds Conveyance or Dedication. To the extent not otherwise provided in this Agreement, delivery of the deed, conveyance or dedication shall occur at a date, time and place mutually agreeable to the grantor and the City or other grantee, or at a date, time and place set by the City not less than thirty (30) days after written notice thereof is given by the City to the grantor. The City agrees to record any deed, conveyance, plat of dedication or plat of subdivision conveying or dedicating any real estate to the City within thirty (30) days after delivery to the City and further agrees to promptly apply for and diligently pursue tax exemption for all such real property.

(G) Environmental Indemnification. The grantor shall partially assign to the City (i.e., an assignment that is limited to the property being conveyed or dedicated in question), and the City agrees to accept, the Memorandum of Agreement between JADA and the United States of America, in lieu of any further environmental indemnifications. As a condition of accepting a conveyance, the City will require that it be named as an additional insured on the environmental liability insurance policy held by the grantor (if any).

Section 38. Interim Uses.

ProLogis shall be entitled to utilize such portion of the Industrial Park owned by ProLogis as it deems appropriate as a construction yard, asphalt batch plant, and concrete batch plant during the term of this Agreement (but not within one thousand (1,000) feet of any occupied residential building located off the Industrial Park), and as a construction headquarters, and shall be entitled to park construction or earth moving equipment, place temporary buildings or structures on such parcels, place construction trailers or related vehicles and equipment in connection with such uses, and install temporary construction project signage on-site on a per building basis and install temporary directional signage not exceeding eighty (80) square feet in area in City right of way in conformance with the Preliminary Site Plan. No City permits or hook-up fees shall be required in conjunction with temporary construction buildings or trailers. Temporary (being defined as the period of time during which the Industrial Park is being developed) outdoor storage of construction materials or supplies shall be permitted. Any interim

Deleted: Section 37. . Property Owners' Associations.

¶ ProLogis shall form one or more property owners' associations (which may take the form of not-for-profit or for-profit corporations, LLCs, or LLPs) for the management and maintenance of any private streets (including any street lights and any sidewalks installed at ProLogis' election), storm water detention, private storm sewer, or common open space amenities within any portion of the Industrial Park acquired by ProLogis. Each such association shall be governed by appropriate declaration of covenants, conditions and restrictions for the particular parcel of the Industrial Park affected. No such declaration of covenants, conditions, easements and restrictions shall contain any provisions inconsistent with this Agreement, or with any provisions of any ordinance or regulation of the City, unless modified by this Agreement.¶

use for a construction yard, construction headquarters, asphalt batch plant and concrete batch plant shall terminate when development and construction of the Industrial Park is completed and may be used only by ProLogis, its contractors and subcontractors in conjunction with work performed at the Industrial Park or in constructing infrastructure serving the Industrial Park.

Section 39. Temporary Occupancy Permits.

The City shall grant temporary occupancy permits for individual industrial or commercial buildings between November 1st and June 15th if weather prevents the completion of the following work for any such building (it being understood that if other work remains to be done, no occupancy permit, temporary or otherwise, will be issued):

(A) The asphalt or concrete has not been installed for any sidewalk or internal driveway or parking surfaces, provided a temporary stone driveway or parking surface has been installed;

(B) Final grading;

(C) Landscaping and lawn irrigation;

(D) Exterior painting;

(E) Exterior signage (other than addresses on buildings).

As a condition of the issuance of any such temporary occupancy permit, the City shall be provided with a timetable for completion of the outstanding work, which timetable shall be deemed a part of the temporary occupancy permit. No letter of credit, bond or cash escrow shall be required in connection with any temporary occupancy permit as herein provided. Such temporary occupancy permit shall expire eight (8) months from the date of issuance, subject to force majeure.

Section 40. Signs.

In lieu of sign ordinances and regulations set forth in City ordinances, signs for the Industrial Park shall be consistent with the "Sign Specifications and Preliminary Sign Location Drawings" attached hereto as Exhibit Q and made part hereof.

Section 41. Enforceability of the Agreement; Violations; Remedies.

(A) This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties by an appropriate action at law or in equity to secure the performance of the provisions and covenants herein described.

(B) Any violation of this Agreement by Owners or ProLogis shall entitle the City to the remedy of specific performance, and/or any other remedy available at law, in equity, or by statute.

(C) Any violation of this Agreement by the City shall entitle the Owners or ProLogis to the remedy of specific performance, and/or any other remedy available at law or in equity, or by statute.

(D) No action based upon any violation of this Agreement shall be brought except until after written notice to the breaching party describing the nature of the alleged violation, and until said party shall have had a thirty (30) day period in which to cure the violation unless a different time period is provided in this Agreement. If the cure of such violation reasonably requires longer than thirty (30) days to complete, then the cure period shall be extended to include such time as is reasonably necessary to complete such cure so long as the party in default is pursuing such cure in good faith and with reasonable diligence.

(E) All remedies provided for in this Agreement are cumulative and the election or use of any particular remedy by any of the parties hereto shall not preclude that party from

pursuing such other or additional remedies or such other or additional relief as it may be entitled to either in law or in equity. Nothing herein shall be construed to limit any remedy available to any party hereto under Article 11, Division 15.1 of the Illinois Municipal Code, as presently in effect or which may hereafter be added by amendment.

(G) ~~In the event any action is brought arising from a breach of this Agreement, or to enforce any provision of this Agreement, venue shall lie in the Circuit Court of Will County, Illinois and the prevailing party in such action shall be entitled to recover its costs, expenses and reasonable attorney's fees from the breaching party.~~

Deleted: <#>If a default occurs in the obligation to maintain Secondary Roads pursuant to the terms of Section 7(A) in a timely manner, after notice and opportunity to cure, then, the City may at its election create and all Owners of property within the Industrial Park shall agree and not object to one or more special service areas within the Industrial Park to provide for the repair, replacement and maintenance (including snow plowing) of said Secondary Roads and accessory street lights and sidewalks) (hereafter, "special service areas"). The special service areas shall be formed as soon as practicable after the aforesaid failure to perform and opportunity to cure. The special service areas shall utilize ad valorem taxation sufficient to generate sufficient revenues for the repair, maintenance and replacement of the Secondary Roads to reasonable commercial standards, including for repair, maintenance and replacement of the Secondary Roads, plus reasonable charges for the cost of personnel, equipment, materials, labor and administrative overhead. The aforesaid special service area provisions shall be included in the property owners' association covenant described above in Section 7(A) which survives the Term of this Agreement.¶

(H) This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois.

Section 42. Reimbursement of City Professional Fees and Other Expenses.

~~(A) To Effective Date of Agreement. ProLogis has heretofore executed a Professional Fee Agreement with the City (the "Fee Agreement"), providing for the reimbursement to the City of its reasonable professional fees and related expenses incurred in connection with the review and approval of this Agreement and the proposed development of the Industrial Park.~~

~~(B) From and After Effective Date of Agreement.~~

~~(1) Upon execution of this Agreement, the Fee Agreement shall terminate except for fees accruing prior to such termination and any balance of deposits thereunder shall be returned to ProLogis after all such unpaid fees are billed and paid.~~

A. ProLogis shall reimburse the City for review fees including outside attorney's, consultants, engineering professional fees, planning fees and related expenses, incurred by the City in the review and approval of all submittals to the City and the development of the Industrial Park, ~~provided that the provisions of this Section 42(B)(2) shall not apply to City review of building permits, it being the intention of the parties that the purpose of this Section 42(B)(2) is not to double charge Owners for application fee services. The hourly rate and charges, staffing requirements and other schedule of fees, if applicable, shall be reasonable and upon request shall be submitted to ProLogis prior to commencement of services by such~~
consultants.

~~Notwithstanding any other provisions of City ordinances, any outside professional fees of the City in connection with this Agreement incurred after the date hereof shall be paid as follows:~~

- ~~(2) All fees, costs and expenses for which reimbursement is sought by the City shall be reasonable and shall not contain City administrative fees, management fees, or mark-ups. The City agrees to require all outside professionals for whom reimbursement is sought pursuant to this Agreement to render statements to the City on a monthly basis and such statements shall be provided to ProLogis within seven (7) days after receipt and at least fourteen (14) days prior to any meeting at which the City proposes to approve such statements for payment. ProLogis shall have the right to object in writing to any fees, costs or expenses which, in ProLogis' view, are not appropriate or reasonable within ten (10) days after receipt of a statement from the City and the City agrees to discuss in good faith any objections by ProLogis prior to payment.~~
- ~~(3) Outside non-legal professional fees shall be comparable to those charged in other Will County municipalities.~~

(C) Third Party Proceedings.

In the event that any third party or parties institute any legal proceedings against the City which relate to the terms of this Agreement (provided the same shall not be founded upon the negligence, intentional misconduct or unlawful action of the City to which ProLogis did not contribute), then, in such event, ProLogis on written notice from the City shall assume, fully and

vigorously, the entire defense of such lawsuit or proceeding and all expenses of whatever nature relating thereto; provided, however,

- (1) The City and its officers, agents and employees shall reasonably cooperate in such defense;
- (2) ProLogis shall not make any settlement or compromise of the lawsuit or proceeding, or fail to pursue any available avenue of initial direct appeal of any adverse judgment, without the written approval of the City;
- (3) If the City, in its sole discretion, determines there is, or there may probably be, a conflict of interest between the City and ProLogis on an issue of importance to the City having a potentially substantial adverse effect on the City, then the City shall have the option of being represented by its own legal counsel at its own expense. In such event, ProLogis shall reimburse the City for such legal fees to the maximum of \$50,000.00.
- (4) This indemnity shall terminate two years from the date of annexation of the Industrial Park by the City.

Section 43. Environmental Remediation.

The City agrees to approve the use and operation of such soil and materials remediation technology equipment as may be utilized to remediate any environmental contamination on the Industrial Park so long as the remediation equipment complies with all applicable state and federal requirements and regulations.

Section 44. No Waiver or Relinquishment of Right to Enforce Agreement.

The failure of any party to this Agreement to insist upon strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any

other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continued in full force and effect.

~~**Section 45. Supersession of Existing City Ordinances or Regulations.**~~

~~It is the intent and agreement of the parties hereto that, to the extent permitted by law, if any pertinent existing ordinance, resolution, or regulation, or interpretations thereof, of the City be in any way inconsistent or in conflict with the provisions hereof, then the provisions of this Annexation Agreement shall constitute a lawful binding amendment thereto and shall supersede the terms of said inconsistent ordinances, regulations, resolutions or interpretations thereof, as they may relate to the Industrial Park. In the alternative, the City shall promptly amend its ordinances, where applicable, to conform to this Agreement. This Agreement replaces, amends in its entirety, and restates the Adjacent Property Annexation Agreement.~~

Section 46. Term of this Agreement.

This Agreement shall be binding upon all parties and their successors and assigns for a term (the "Term") commencing upon the date of the execution of this Agreement by the City until _____, 2027, or for any extended time that may be validly agreed to by amendment.

**Section 47. Covenants and Agreements Binding; "Owner";
"Owners"; "Successors" Deemed "Owners".**

Subject to the terms of the last paragraph of Section 7(E) and the last paragraph of Section 7(F), this Agreement and the agreements, covenants, rights, and promises set forth herein shall run with the land and shall both bind and benefit the grantees, heirs, successors, and assigns of JADA, ProLogis, the City and the Corporate Authorities of the City and their successors in office (collectively, "Successors") and apart from JADA , ProLogis, the City and their

Successors, and the mortgagees (including leasehold mortgagees) and tenants of JADA, ProLogis, the City and their Successors, this Agreement is not intended to give or confer third party beneficiary status on other parties. Nothing in this Agreement shall in any way be deemed to prevent the alienation, encumbrance or sale of the Industrial Park or any portion thereof and any Successor shall be both benefited and bound by the rights, conditions, and restrictions on the terms and conditions and subject to the limitations set forth in this Agreement, including without limitation the limitations contained in the last paragraph of Section 7(E) and the last paragraph of Section 7(F). Except as specifically provided herein, upon the conveyance by JADA, ProLogis, or a Successor, of all or any portion of the Industrial Park, such entity shall, automatically and without further action by any party, be released of all liability under this Agreement with respect to that portion of the Industrial Park that is so conveyed. Subject to the terms of the last paragraph of Section 7(E) and the last paragraph of Section 7(F), each Successor that, from time to time, acquires any fee interest in all or any portion of the Property shall acquire such interest subject to said agreements, covenants, rights, and promises, and the other terms and provisions of this Agreement and, during the period of time that JADA, ProLogis and such Successor or Successors owns such interest, he, she, or it shall be deemed an "Owner" for the purposes of this Agreement and be entitled to the rights of Owner under this Agreement and shall be obligated to pay and perform any and all obligations of the Owner, ProLogis or JADA as applicable to said period of time and applicable to that portion of the Industrial Park in which he, she, or it holds any estate or fee interest, jointly and severally with any and all of the other holders of any fee interest in all or any portion of the Industrial Park. ProLogis and JADA are deemed Owners throughout their period of ownership of a fee interest in the Industrial Park.

Section 48. Severability.

If any non-material provision of this Agreement is held invalid by any court of competent jurisdiction, such provision shall be deemed to be excised herefrom, and the invalidity thereof shall not affect any of the other provisions of this Agreement which can be given effect without such invalid provision, and to that end, the provisions of this Agreement are severable.

Section 49. Title Evidence - Disclosure of Parties in Interest.

JADA shall, prior to approval by the City of the zoning of the Industrial Park, and prior to annexation, provide the City with an affidavit or valid title policies or commitments for title insurance showing that title to the Industrial Park is held by JADA.

Section 50. Notices.

Any notices required or permitted to be sent pursuant to the provisions of this Agreement shall be in writing and shall be sent by certified mail, national overnight express delivery courier, or hand delivery to the following addresses until written notice of change of address is given, and shall be deemed received on the fourth business day following deposit in the United States Mail, or upon actual receipt, whichever shall be earlier:

If to JADA:

Joliet Arsenal Development Authority
Attention: Executive Director
Two Rialto Square
Suite 201
Joliet, Illinois 60432
Telephone: (815) 722-9700

with a copy to:

David W. Neal
David W. Neal & Associates
116 North Chicago Avenue, Suite 602
Joliet, Illinois 60432

Telephone: (815) 727-0017

If to the City:

Honorable [J. Marty Orr](#)
Mayor
City of Wilmington
1165 South Water Street
Wilmington, Illinois 60481
Telephone: (815) 476-6675

Deleted: Roy Strong

with a copy to:

[John A. Urban](#)
[123 N. Water Street](#)
[Wilmington, IL 60481](#)
Telephone: (815) [476-4600](#)

Deleted: David J. Silverman, Esq.¶
Mahoney, Silverman &
Cross, Ltd. 822 Infantry
Drive¶
Suite 100¶
Joliet, Illinois 60435

Deleted: 730-9500

If to Developer:

Douglas A. Kiersey, Jr.
Senior Vice President/Midwest Region
ProLogis
8755 W. Higgins Rd. Ste 700
Chicago, IL. 60631
Telephone: (773-380-3253)

with a copy to:

ProLogis
4545 Airport Way
Denver, CO 80239
Attention: Legal Department
Telephone:

Barry Nekritz, Esq.
John J. Lawlor, Esq.
Sonnenschein Nath & Rosenthal LLP
7800 Sears Tower
Chicago, Illinois 60606
Telephone: (312) 876-8000

Section 51. Entire Agreement.

Except as otherwise expressly provided, this Agreement supersedes all prior agreements, negotiations and exhibits, and is a full integration of the entire agreement of the parties, and may not be amended except by further written agreement duly authorized by the corporate authorities and parties hereto, or, as applicable, approved by any court having or retaining jurisdiction over the subject matter of this Agreement. The attorneys for the parties may, by mutual agreement, replace or revise the exhibits hereto to correct typographical errors or errors in legal descriptions prior to recording, and may replace any pages or exhibits containing handwritten corrections with conformed copies thereof.

Section 52. Time of the Essence; Good Faith.

It is understood and agreed by the parties hereto that time is of the essence of this Agreement, and that all parties will make every reasonable effort, including the calling of special meetings as necessary, to expedite the subject matters hereof. It is further understood and agreed by the parties that the successful consummation of this Agreement and of the Preliminary Site Plan requires the continued cooperation and best efforts of all parties.

Section 53. Recording.

This Agreement and all exhibits thereto, certified as to adoption by the City Clerk, shall be recorded by the City upon execution, acknowledgment and approval. The existence thereof shall be noted by ProLogis on any final plat of subdivision for any portion of the Industrial Park prior to its recording.

Section 54. City Approval or Direction.

Where City approval or direction is required by this Agreement, such approval or direction means the approval of the corporate authorities of the City unless otherwise expressly

provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approvals have been met unless such requirements are inconsistent with this Agreement.

Section 55. Singular and Plural

Wherever appropriate in this Agreement, the singular shall include the plural, and plural shall include the singular, unless the context clearly indicates otherwise.

Section 56. Section Headings and Subheadings.

All section headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

Section 57. Construction of Agreement.

No provision of this Agreement shall be construed more strongly against any party to this Agreement, the parties recognizing that all parties have contributed substantially to the drafting of this Agreement.

Section 58. Conflict with Text and Exhibits.

In the event of a conflict in the provisions of the text of this Agreement and exhibits attached hereto, the text of the Agreement shall control and govern.

Section 59. Execution in Counterparts.

This Agreement may be executed in two or more counterparts, each of which may be deemed original and, taken together, shall constitute one and the same instrument.

Section 60. Definition of "City."

Wherever the term "City" is used herein it shall be construed as referring to the corporate authorities of the City unless the context clearly indicates otherwise.

Section 61. Execution of Agreement: Effective Date.

This Agreement shall be signed last by the City, and the Mayor of the City shall affix the date on which he signs this Agreement, which date shall be the Effective Date of this Agreement.

Section 62. Corporate Capacities.

The parties acknowledge that the corporate authorities of the City have approved and the Mayor and City Clerk have executed this Agreement in their official capacities and not personally, and that no personal liability of any kind shall attach or extend to said officials on account of any act performed in connection with the execution and implementation of this Agreement.

Section 63. Amendments and Modifications.

No change to this Agreement shall be effective unless and until such change is reduced to writing and executed by the City and the fee owners of record of the Industrial Park at the time any modifications is intended to be effective pursuant to all applicable statutory or other procedures; provided, however, that if the subject matter of an amendment to this Agreement relates to a portion of the Industrial Park only, such amendment may be executed only by the then-Owner of such portion and the City need not be executed by any other then-Owner of the Industrial Park.

Section 64. Stop Orders.

The City will issue no stop orders directing work stoppage on buildings or other development unless in writing and setting forth the Section of the City's ordinances allegedly violated, and an Owner may forthwith proceed to correct such violations as they may exist. Work may continue on any structure subject to a stop order after reinspection by the City indicates the violation has been corrected. It is agreed that a violation of the City's ordinance or

regulations relative to the development of one building or structure shall not be the basis for any such stop order relative to the development of a separate building or structure or other Industrial Park infrastructure improvements. No violation of a City ordinance or regulation shall be deemed to exist where such ordinance or regulation has been modified by this Agreement.

Section 65. Additional Property.

The parties acknowledge and agree that certain parcels adjacent to the Industrial Park known as Permanent Index Numbers 18-19-200-001-0000 (approximately 160 acres), 18-19-100-003-0000 (approximately 78.61 acres), and 18-19-100-002-0000 (approximately 80 acres) are not now being annexed (hereinafter called the "Additional Property"). In the event ProLogis acquires either a contractual right to acquire title or acquires title to the Additional Property, ProLogis shall forthwith petition City to annex the Additional Property on terms near-identical to the annexation of the Industrial Park. The City and ProLogis covenant and agree that in conjunction with the annexation of the Additional Property, and as a condition thereof, this Agreement and the Concept Plan shall be amended so that the Additional Property becomes apart of the Industrial Park, and shall be governed entirely pursuant to this Agreement. To the extent that additional public hearings for the zoning and annexation of the Additional Property are required or advisable, the City and ProLogis shall take all such steps reasonable to accomplish the intent hereof.

Section 66. Force Majeure.

For the purposes of this Agreement, wherever a period of time is prescribed for a party to take action, such party will not be liable or responsible for delays due to Acts of God, war, strikes or shortages of labor or materials not caused by the party in question, and the time for performance for the aforesaid will be extended by the length of time attributable specifically to

such "force majeure" causes, provided and on the condition that the party claiming the need for such an extension notifies the other within thirty (30) days of the event of force majeure. Notwithstanding the foregoing, events or conditions such as and including lack of money, financial inability, failure to perform of any contractor, agent, vendor or consultant delays in applying for permits for construction, or inaction or failure to order long lead time items sufficiently in advance of the time needed shall not be events of force majeure for which the time for performance hereunder shall be extended.

Section 67. Effectiveness.

The obligations of JADA, ProLogis and the City hereunder are contingent upon either (i) the conveyance by JADA to ProLogis of Phase I of the Industrial Park as depicted on Group Exhibit F within forty-five (45) days of the date of this Agreement, or (ii) ProLogis issuing written notice to the City within forty-five days after the date of this Agreement stating that ProLogis has waived all conditions precedent to close with JADA on Phase I (but for title, survey and closing escrow requirements) failing which this Agreement shall be null, void and of no further force and affect. ProLogis shall advise the City in writing within sixty (60) days from the date of this Agreement as to whether said conveyance has occurred.

IN WITNESS WHEREOF, the City, JADA and ProLogis have caused this instrument to be executed by their respective proper officials duly authorized to execute the same on the day and the year first written.

CITY OF WILMINGTON, a municipal corporation

By: _____
Mayor
Effective Date:

ATTEST:

City Clerk

[Seal]

JOLIET ARSENAL DEVELOPMENT AUTHORITY,
a municipal corporation

By: _____
Richard A. Kwasneski
Executive Director

ATTEST:

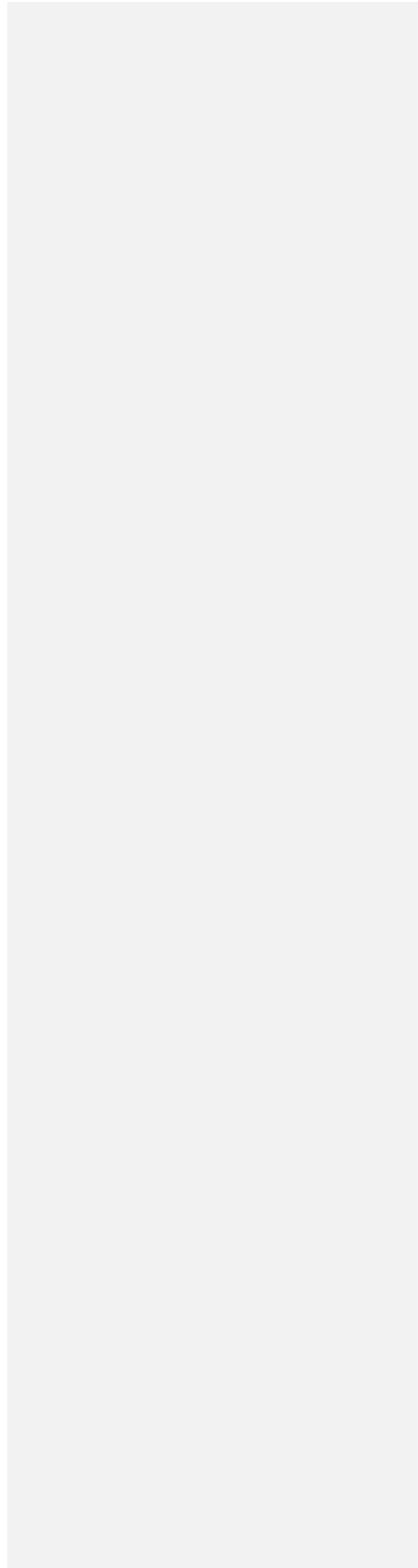
Secretary

PROLOGIS, a Maryland real estate investment trust

By: _____
Its: _____

ATTEST:

Secretary



STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY** that _____ personally known to me to be the Mayor of the **City of Wilmington**, a municipal corporation, and _____ personally known to me to be the City Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the City Council of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this ___ day of ___, 2016.

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Notary Public

STATE OF ILLINOIS)
)ss.
COUNTY OF WILL)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY** that the above-named Richard A. Kwasneski and _____ personally known to me to be the Executive Director and Secretary, respectively, of **Joliet Arsenal Development Authority**, an Illinois municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act, and the free and voluntary act of the said Authority, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2016.

Deleted: 2007

NotaryPublic

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY** that_____, personally known to me to be the _____ of **ProLogis**, a Maryland real estate investment trust and _____ personally known to me to be the_____, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____, he/she signed and delivered the said instrument and caused the corporate seal of said_____to be affixed thereto, pursuant to authority given by the _____as their free and voluntary act, and as the free and voluntary act and deed of said _____, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2016.

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Notary Public

PIPELINE CROSSING AGREEMENT

Mile Post: 52.45, Joliet Subdivision/Branch
Location: Wilmington, Will County, Illinois

THIS AGREEMENT (“Agreement”) is made and entered into as of _____, 2016, (“Effective Date”) by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (“Licensor”) and **CITY OF WILMINGTON, ILLINOIS**, a municipality of the State of Illinois, to be addressed at 1165 S. Water Street, Wilmington, Illinois 60481 (“Licensee”).

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 12” concrete encased pipeline for transporting and conveying potable water only

across Licensor's track(s) and property (the “Pipeline”) in the location shown and in conformity with the dimensions and specifications indicated on the print dated February 15, 2016 and marked **Exhibit “A”**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying natural gas, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit “A”, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 2. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 3. INSURANCE.

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this license, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 4. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

Article 5. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

CITY OF WILMINGTON, ILLINOIS

By: _____

By: _____

Name Printed: _____

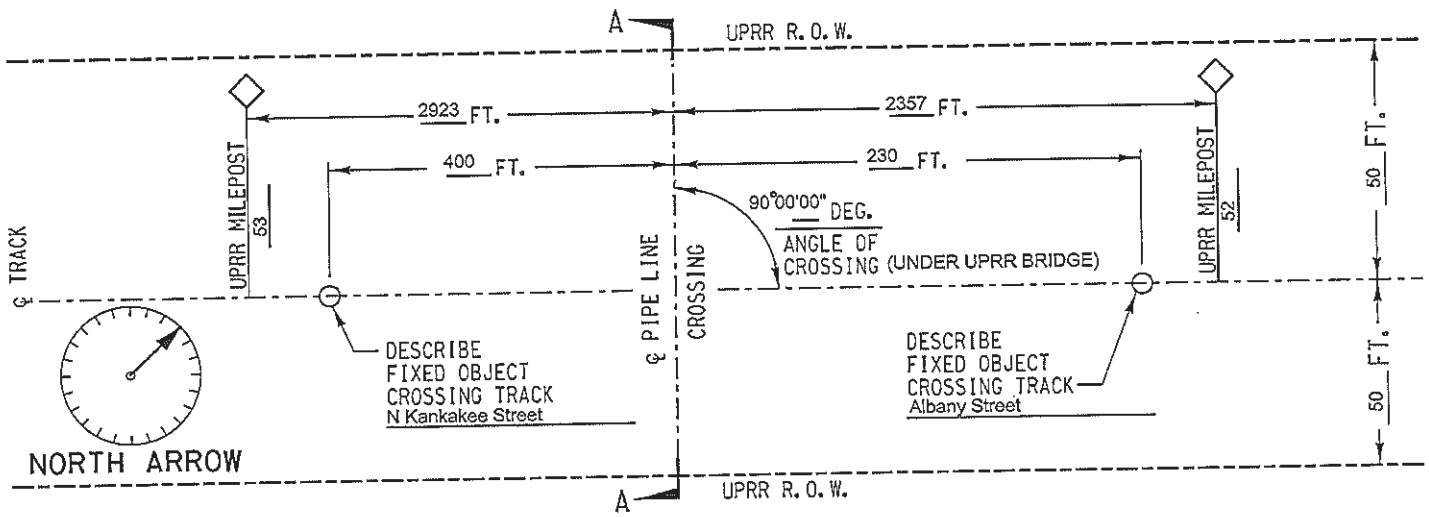
Name Printed: _____

Title: **Manager – Real Estate**

Title: _____

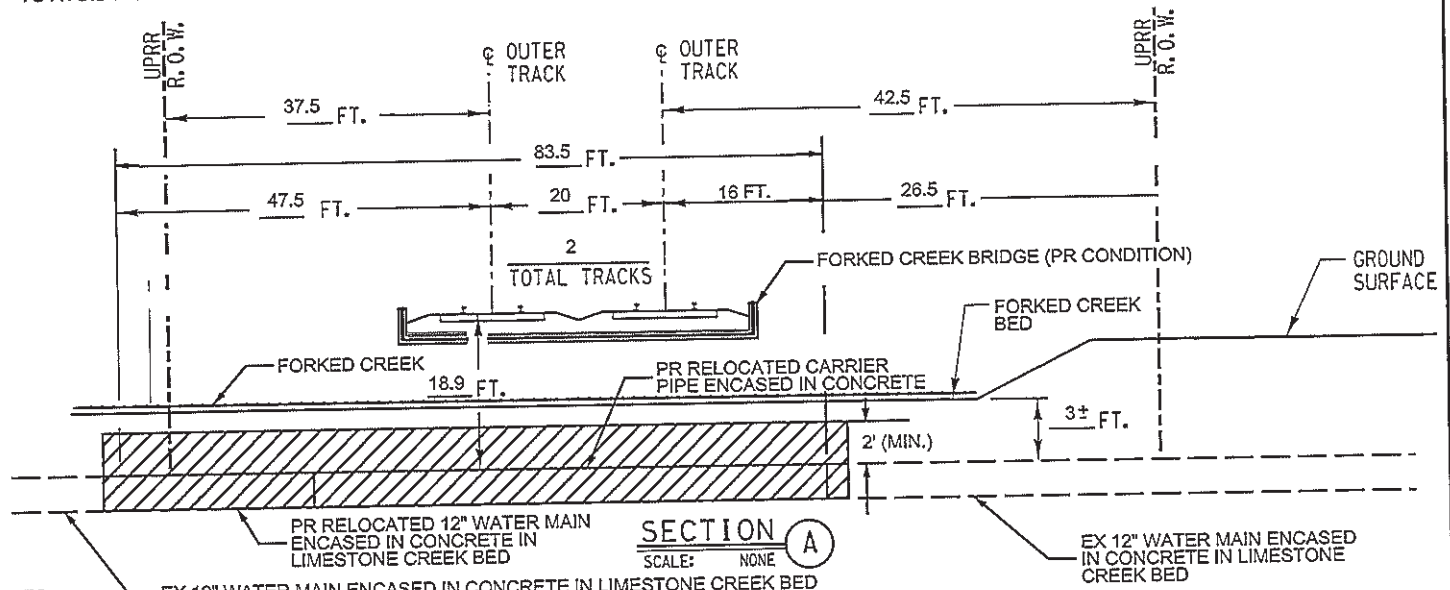
NON-FLAMMABLE LIQUID PIPELINE

- CROSSING
- ENCROACHMENT
- BOTH



PLAN
SCALE: NONE

NOTE: RELOCATION OF EXISTING WATER MAIN TO AVOID NEW UPRR BRIDGE PIER



SECTION A
SCALE: NONE

- NOTES:
 1) ALL DIMENSIONS MEASURED PERPENDICULAR TO THE CENTERLINE OF TRACK.
 2) REFER TO AREMA VOLUME 1, CHAPTER 1, PART 5, SECTION 5.3.

HSR FORKED CREEK CONFLICT

- A) METHOD OF INSTALLATION TRENCH IN ROCK W/ CONCRETE ENCASEMENT
 B) DIST. FROM CENTERLINE OF TRACK TO PIPE ENCROACHMENT N/A
 C) SIGNS PROVIDED?
 D) CARRIER MATERIAL DUCTILE IRON CL 52. IF RCP, CLASS V?
 COMMODITY TO BE CONVEYED POTABLE WATER
 OPERATIONAL PRESSURE 40 PSI. MAOP 60 PSI.
 WALL THICKNESS (INCH)/ SCHEDULE 0.370. DIAMETER 12" IN.
 CATHODIC/COATING PROTECTION TAR & POLYETHYLENE WRAP
 E) CASING MATERIAL CONCRETE ENCASEMENT. IF RCP, CLASS V?
 TOTAL LENGTH: CASING CONCRETE ENCASEMENT ACROSS COMPLETE ROW UNDER BRIDGE. ENCASEMENT IS 9" EACH SIDE OF PIPE BY 2' ABOVE (MIN.)
 F) DISTANCE FROM CENTERLINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES N/A AND N/A. (OPEN TRENCH UNDER PR/EX BRIDGE)



BUILDING AMERICA®

EXHIBIT "A"

SUBDIVISION: JOLIET	
TRACK TYPE: MAINLINE	
M.P.: 52.45	LAT.: 88°08'44.1" W
E.S.M.:	LONG.: 41°18'47.7" N
NEAREST CITY: WILMINGTON	COUNTY: WILL STATE: IL
APPLICANT: CITY OF WILMINGTON, ILLINOIS	
FILE NO.: 2980-75	DATE: 02 / 15 / 2016

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

John Jerome
Program Manager
Phone: 618-399-1760
Email: jrjerome@up.com

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other

special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. **IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM**

ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;**
- 2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**
- 3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;**
- 4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;**
- 5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR**
- 6. LICENSEE'S BREACH OF THIS AGREEMENT,**

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Approved: Insurance Group
Created: 9/23/05
Last Modified: 03/29/10
Form Approved, AVP-Law

EXHIBIT C
Union Pacific Railroad Company
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. Umbrella or Excess insurance. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

**PROJECT “TURNKEY”
ECONOMIC DEVELOPMENT AGREEMENT**

DRAFT

Prepared by: City Administrator Tony Graff ó 05032016

THIS ECONOMIC DEVELOPMENT AGREEMENT dated this ____ of _____, 2016, by and between the City of Wilmington, an Illinois Municipal Corporation, hereinafter referred to as “City”, and Adar Ridgeport Industrial Partners, LLC, hereinafter referred to as “Developer” and Project Highpoint, hereinafter referred to as “Tenant”.

WITNESSETH:

WHEREAS, the Developer and Tenant desire to enter into an agreement whereby Developer would construct to Tenant’s requirements suitable structures or buildings to enable Tenant to conduct its business activities. The proposed construction site consists of an area of approximately 65 acres and is as described in “Exhibit A” which is attached hereto and made a part hereof. Such site is hereinafter referred to as “Subject Property”; and

WHEREAS, it is represented that the proposed development will create sixty-nine additional job opportunities through the Tenant’s transaction of its business in the City; and

WHEREAS, the development will serve to develop nearby and adjacent properties; and

WHEREAS, without this agreement it would not be economically feasible or otherwise possible for Developer or Tenant to expand and relocate the proposed business within the City; and

WHEREAS, the Developer and Tenant have exhibited high standards of credit-worthiness; and

WHEREAS, the proposed development will strengthen the commercial/industrial sector of the municipality, enhance the tax base of the municipality, and is otherwise in the best interest of the parties hereto; and

WHEREAS, the City deems it desirable and necessary to enter into an agreement to bring into the City the new Tenant; and

WHEREAS, the municipal authorities believe that a proposed plan for the utility tax rebate from the City to the Developer/Tenant is in the best interest of the City and the health, safety, morals, and welfare of its residents as it will provide further economic growth and employment opportunities as well as increase the tax base of the City and other taxing districts; and

WHEREAS, the Tenant has agreed to provide the City, under oath, a copy of its paid utility bills together with its certified payroll summary on a quarterly basis. The City agrees, upon verification of the amounts paid, to remit quarterly to the Tenant a portion of the City's utility tax paid by the Tenant based upon the formula set forth herein; and

WHEREAS, in order to fully implement this Agreement and the responsibilities of the parties hereto, this document has been created and sets forth with particularity the obligations of each party hereto.

NOW, THEREFORE, in exchange for the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties to this "Economic Development Agreement" do hereby agree as follows:

1. THE DEVELOPER/TENANT AGREES AS FOLLOWS:

A. The Developer shall construct an initial building for use of Tenant on the Subject Property described in "Exhibit A", with construction estimated to commence by December 2014

and to be completed 365 days after commencement. Developer and Tenant warrant to the City that the cost of construction of the improvements will be \$15,000,000.00 exclusive of other significant costs for interior improvements, furnishings and equipment.

B. The Developer agrees to pay all permit, licensing and other fees which may be required by or granted to the Developer or its assignees from the City. The Developer further agrees to comply with all Ordinances as it relates to the Business of the Developer in the City.

Deleted:

C. The Developer agrees to comply with all Ordinances regarding the construction of the improvements on the Subject Property subject to any of the limitations stated in this Agreement. The City agrees to reimburse the Developer/Tenant through this Economic Development Agreement as calculated herein.

2. THE CITY AGREES AS FOLLOWS:

A. The City agrees and acknowledges that the Subject Property is currently zoned for business purposes permitting the proposed development on the subject property appropriate for the subject purpose, including any reasonable variances that may be required regarding the City's zoning and other municipal ordinances.

B. To insure the proper development of the area and to foster continued economic growth, the City hereby agrees to a rebate of a portion of its Utility Tax generated and paid by the Tenant on the Subject Property to the Tenant as set forth in paragraph 2D below. The Developer is solely responsible for all construction and installation of all project improvements as they relate to the Subject Property.

C. Subject to the limitations set forth in 2D herein, payment by the City to the Tenant of the Utility Tax Rebate shall be made quarterly after the City begins receiving the Utility Tax from the improvements made on the Subject Property.

D. Commencing upon commencement of operations by Tenant, and for each calendar year thereafter for a period of seven (7) years, subject to the limitations of subparagraph 8Eö below, the City shall pay quarterly to Tenant sixty percent (60%) of all Utility Tax that the City shall receive from Tenant for its use of its Wilmington facility up to the total eligible job credit as determined by Tenantsøverifiable employment summaries.

E. The total estimated job credit based upon the proposed hiring schedule is \$266,000. The total annual credit may not exceed 60% of the Utility Tax, and the total credit awarded over the term may not exceed \$4.2 million over the term (20% of the Developerø project hard costs). The calculation of the credit shall be based upon the following chart:

Job Type & # of Positions	Minimum Hourly Wage	Credit Per Job with Totals
Unskilled - # of Jobs	\$11.00 - \$15.99	\$2,500/TBD
Semi-Skilled - # of Jobs	\$16.00 - \$23.99	\$3,000/TBD
Skilled - # of Jobs	\$24.00 - \$27.99	\$4,000/TBD
Professional - # of Jobs	Over \$28.00	\$5,000/TBD

Once the value of the Utility Tax, based on actual and verifiable employment summaries, has been rebated to Tenant the City will no longer be obligated to rebate any Utility tax to Tenant. Should the Utility Tax paid in the first seven (7) years of operation not result in \$_____ eligible job credit rebates or the actual total value of job credit rebates based on credit calculation, the Tenant shall have an additional five (5) years within which to recapture the eligible job credit. If Tenant fails to substantially and materially meet at least 20% of its job commitment indicated in this agreement or fails to continue its business in Wilmington for a period of twelve (12) years, Tenant shall, after being provide written notice by the City, repay within ninety (90) days all or a portion of Utility Tax rebates paid by the City to Tenant. In determining the amount to be repaid by the Tenant to the City, the City shall consider market

conditions leading to the failure to meet its commitments. In no event shall the amount rebated exceed twenty (20%) percent of the Developer's project hard costs.

3. GENERAL PROVISIONS

A. It is the agreement of the parties that these rebate amounts as set forth herein apply only to the Utility Tax revenue produced on the approximately 6.5 acre site described in Exhibit A and shall apply to all buildings developed by the Developer and leased to Tenant subject to the restrictions contained in Paragraph 1A herein.

B. The City's obligation to reimburse the Developer/Tenant for the costs of project improvements constitute a limited obligation of the City payable solely from sums received by the City for Utility Tax paid by Tenant. The obligations created herein do not and shall never constitute a general indebtedness of the City within the meaning of the State of Illinois constitutional or statutory provisions, and shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power.

C. In the event that an individual or entity attempts to enjoin or otherwise declare this Development Agreement or the establishment of the Utility Tax Rebate Agreement illegal, null, void and/or of no further force and effect, the Developer/Tenant agrees to vigorously defend this Agreement and the City will not take a position adverse to enforcement of the same.

Further, in the event that an individual or entity not a party to this Agreement contests the validity of this Agreement, the City and the Developer/Tenant shall be responsible for their own attorney's fees and costs incurred for defending same.

D. Time is of the essence of this Development Agreement. However, a party shall not be deemed in default with respect to any obligations of this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or

in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees), or any other cause beyond the reasonable control of such party. If Tenant does not commence business operation within twenty-four (24) months of the date of this Agreement this Agreement shall be void.

E. The City agrees that it shall consider additional economic incentives for Project Turnkey upon the use of sustainable efficient energy type of architecture and the use of building materials to reduce the use of energy and impact to the environment. Upon performing a review for the building and site design the City will consider an economic incentive to encourage green technology and conservation design. The City will rebate the city telecommunication tax at a rate of fifty (50%) percent for six (6) years upon meeting established goals. The standard which will be used will be to meet or exceed LEED Certification to be determined. The City will consider economic incentive if a LEED certification application is submitted and considered by the U.S. Green Building Council, but LEED certification is not obtained. The reimbursement will be on a pro-rata basis.

Deleted: ,

F. The City will make available at no cost to the Tenant or third party logistics provider the use of a physical meeting space to conduct employee screening, training, or similar activities, should it be required in advance of and during the hiring period.

G. All information supplied to the City by the Developer/Tenant shall be confidential to the extent permitted by law.

H. The Developer's rights and obligations hereunder may be assigned to another party with the permission of the City, the City warranting that said permission will not be unreasonably withheld. In the event that an Assignment takes place, this Development Agreement shall ensure to the benefit of and be binding upon the parties and their successors and assigns. Nothing herein shall prevent the assignment of the Developer's rights and obligations under this Agreement to a third party, said assignment will only be enforceable to convey the benefits of this Agreement if the Assignee signs a separate document agreeing to be bound to the terms and conditions of this Agreement unless all parties agree to the contrary.

I. In the event that either the City or the Developer/Tenant fails to carry out the terms of this Agreement or defaults in the performance of any material provision of this Agreement to the detriment of the other party (a "Default"), and that a remedy for said Default has not otherwise been provided for in this Development Agreement, then, and in that event, the parties shall have the following rights and obligations:

- i. Notice. Upon any such Default, the nondefaulting party shall notify the defaulting party of such Default in writing, by certified mail or personal service as defined in paragraph H setting forth the nature of such Default and specifying the action necessary to cure said Default. The Defaulting party shall thereafter have a period of sixty (60) days from the date of receipt of such notice in which to cure such Default.
- ii. Remedies of Nondefaulting Party. If the defaulting party fails to cure the Default by the end of the sixty (60) day period specified in this paragraph 3G, then the nondefaulting party shall have the right to institute proceedings to enforce the provisions of this Development Agreement by all means available in law or equity, including but not limited to, temporary restraining order, injunction and damages.
- iii. Reimbursement of Expenses. In addition to receiving payment of all amounts due under this Development Agreement and compliance with the provisions of this Development Agreement, the prevailing party shall have the right to receive from the non-prevailing party reimbursement for all costs and expenses (including reasonable attorney's fees) incurred by such non-prevailing party in instituting such proceedings.

iv. Nonexclusive Remedies. Any rights, powers or remedies, special, optional or otherwise, given or reserved to the parties by this section, shall not be construed to deprive the parties of any rights, powers or remedies otherwise given by law or equity.

J. All notices, demand requests, consents, approvals or other instruments required or permitted by this Development Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of third day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

TO DEVELOPER: Adar Ridgeport Industrial Partners, LLC

With a copy to:

TO CITY: Mayor of the City of Wilmington
Wilmington City Hall
1165 South Water Street
Wilmington, IL 60481

With a copy to: City Clerk, City of Wilmington
1165 South Water Street
Wilmington, IL 60481

With a copy to: John A. Urban
123 N. Water Street
Wilmington, IL 604081

TENANT: Project Highpoint
Minnesota Company
Representative/CFO

With a copy to: Developer/Operator

or such other address as may be designated from time to time by either party by written notice to the other.

K. Except as otherwise provided herein, this Economic Development Agreement, the exhibits hereto, and the final plans and specifications for the project improvements contain the entire agreement of the parties in regard to the subject matter hereof. No agreement or commitment by either party not herein contained shall be binding unless in writing and signed by the parties.

CITY OF WILMINGTON, an Illinois
municipal corporation:

Developer

By: _____
Mayor

By: _____

ATTEST:

ATTEST:

By: _____
City Clerk

By: _____

TENANT

By: _____
Representative

ATTEST:

By: _____

Note: Exhibit A "Site Plan" needs to be provided by the Developer