

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH PROLOGIS FOR THE CONSTRUCTION OF A NEW INDUSTRIAL BUILDING IN THE SKYLINE INDUSTRIAL DISTRICT LOCATED AT 5181 SAMUELL BOULEVARD, MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas ("City"), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, the City Council of the City (the "City Council") has been presented with a proposed agreement providing economic development incentives to Prologis, a Maryland real estate investment trust (the "Company"), for the construction of a new industrial building in the Skyline Industrial District located at 5181 Samuell Boulevard, in the City of Mesquite, Texas, a copy of said agreement being attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 6. That the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph or section of this Resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this Resolution.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 3rd day of September 2019.

Stan Pickett
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

(Chapter 380 Agreement)

This Economic Development Program Agreement ("Agreement") is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the "City") and Prologis, a Maryland real estate investment trust (the "Company").

WITNESSETH:

WHEREAS, all capitalized terms used herein shall have the meanings set forth in this Agreement; and

WHEREAS, the Company is the owner of that certain tract of real property located in the City of Mesquite, Texas, consisting of approximately 14 acres and being commonly known as 5181 Samuell Blvd., Mesquite, Texas 75149 and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "Land"); and

WHEREAS, the Company intends to construct an industrial building consisting of at least 237,473 square feet on the Land (the "Improvements"); and

WHEREAS, the Company will be making at least SIXTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$16,500,000.00) of capital improvements to the Land in connection with the construction of the Improvements; and

WHEREAS, the Improvements will substantially increase the taxable value of the improvements on the Land thereby adding value to the City's tax rolls and increasing the ad valorem real property taxes to be collected by the City; and

WHEREAS, the Land and Improvements are hereinafter sometimes collectively referred to as the "Mesquite Facility"; and

WHEREAS, the Company intends to lease the Improvements to one or more tenants that will occupy all or part of the Improvements for the purpose of manufacturing, storage and/or distribution of goods; and

WHEREAS, it is anticipated that employment opportunities will be made available at the Mesquite Facility and the business personal property installed by tenants of the Mesquite Facility will add value to the City's tax rolls and increase the ad valorem business personal property taxes to be collected by the City; and

WHEREAS, the Company has advised the City that the Company will construct the Improvements sooner if the City provides the Economic Development Incentive to the Company under the terms and subject to the conditions more fully set forth in this Agreement; and

WHEREAS, the City has established an Economic Development Incentive Program pursuant to Section 380.001 of the Texas Local Government Code (the "Program") and authorizes this Agreement as part of the Program; and

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company's performance of its obligations set forth in this Agreement will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

ARTICLE I

Incorporation of Recitals

The foregoing recitals ("Recitals") are incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II

Definitions

As used herein, the following terms shall have the following meanings, to-wit:

"Agreement" shall mean this agreement together with all exhibits attached hereto.

"Capital Investment" shall have the meaning set forth in Article VII, Section 3 of this Agreement and shall include only expenditures capitalized as capital assets on the books of the Company in accordance with generally accepted accounting principles.

"Capital Investment Certificate" shall have the meaning set forth in Article VII, Section 4 of this Agreement.

"Certificate of Compliance" shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that all Conditions Precedent have been satisfied and are then continuing; and (ii) that no Company Default (as hereinafter defined) then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement.

"Certificate of Occupancy" shall mean a final certificate of occupancy issued by the City to a tenant of the Company after the Improvements have been completed in compliance with the City's building, health, safety, fire and other codes and authorizing such tenant to occupy and operate a business from at least 79,000 square feet of the Improvements.

"City" shall mean the City of Mesquite, a Texas home rule municipality.

"City Default" shall have the meaning set forth in Article IX, Section 4 of this Agreement.

"Company" shall mean Prologis, a Maryland real estate investment trust, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

"Company Default" shall have the meaning set forth in Article IX, Section 1 of this Agreement.

"Company Representative" shall mean any duly authorized officer of the Company acting on behalf of the Company.

"Conditions Precedent" shall have the meanings set forth in Article VII of this Agreement.

"Economic Development Incentive" shall mean an incentive described in Article VIII of this Agreement.

"Effective Date" shall mean the date the Company and the City execute this Agreement if the Company and the City execute this Agreement on the same date. If the Company and the City execute this Agreement on different dates, any reference to the "Effective Date" shall mean the later of the dates this Agreement is executed by the Company and the City.

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

“Improvements” shall have the meaning set forth in the Recitals to this Agreement and in Article VII, Section 1 of this Agreement.

“Land” shall have the meaning set forth in the Recitals to this Agreement.

“Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“Mesquite Facility” shall have the meaning set forth in the Recitals to this Agreement.

“Party” shall mean either the Company or the City.

“Parties” shall mean the Company and the City.

“Payment Request” shall mean the written request executed by the Company requesting the payment of the Economic Development Incentive.

“Person” or “Persons” shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability company(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

“Program” shall have the meaning set forth in the Recitals to this Agreement.

“Recitals” shall have the meaning set forth in Article I of this Agreement.

“Term” shall have the meaning set forth in Article IV of this Agreement.

“Undocumented Workers” shall mean: (i) individuals who, at the time of employment with the Company, are not lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other persons as are included within the definition of “Undocumented worker” pursuant to V.T.C.A., Government Code §2264.001(4), as hereafter amended or replaced.

“Water, Wastewater and Roadway Impact Fees” shall mean water, wastewater and roadway impact fees imposed by the City pursuant to City Ordinance No. 4366, as amended or replaced, to generate revenue to fund or recoup all or part of the costs of capital improvements or facility expansion necessitated by and attributable to the Improvements provided, however, in no event shall Water, Wastewater and Roadway Impact Fees include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements imposed pursuant to the City’s zoning or subdivision regulations.

ARTICLE III

Authority for Agreement

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations herein will: (i) increase the amount of real and business personal property ad valorem taxes assessed and collected by the City; (ii) result in employment opportunities being created in the City; (iii) promote local economic development in the City, stimulate business and commercial activity in the City; and (iv) benefit the City and its citizens.

ARTICLE IV

Term

The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) December 31, 2021; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (the "Term").

ARTICLE V

Company's Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented Workers and the Company hereby covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. §1324a (f) during the Term of this Agreement, within thirty (30) days from the date of such conviction.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving any Economic Development Incentive under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f), the Company shall pay to the City, not later than the 120th day after the date the City notifies the Company of the violation, an amount equal to the total Economic Development Incentive previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of the Economic Development Incentive being recaptured from the date the Economic Development Incentive was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentive to the Company if the Company, or any branch, division or department of the Company is convicted of a violation under 8 U.S.C. §1324a (f) during the Term of this Agreement.

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Company is not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a person with whom the Company contracts.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI

Company's Additional Covenants

In consideration of the City's agreement to grant the Economic Development Incentive to the Company upon the terms and conditions more fully set forth herein, the Company represents, covenants and agrees as follows, to-wit:

1. Timely Payment of Development Fees. The Company shall timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with the Improvements (hereinafter defined) including, without limitation, all Water, Wastewater and Roadway Impact Fees;

2. Records and Reports. During the Term of this Agreement, the Company shall deliver to the City within sixty (60) days after written request, copies of such invoices, paid receipts, payment records, and other documentation as the City may reasonably request to confirm compliance by the Company with the representations, covenants and agreements set forth in this Article VI;

3. Inspection. The Company shall provide the City, its agents and employees with access to the Mesquite Facility at such times as the City may reasonably request during the Term of this Agreement to conduct such inspections as the City deems necessary in order to confirm compliance by the Company with the representations, covenants and agreements of the Company as set forth in this Agreement provided the City has given the Company at least seventy-two (72) hours prior written notice of such inspection;

4. Representative of Company to Accompany Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to Article VI, Section 3 above;

5. Timely Payment of Taxes. The Company shall timely pay all ad valorem taxes assessed against the Mesquite Facility during the Term of this Agreement prior to the date such taxes become delinquent;

6. Maintenance Obligations. The Company shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the Term of this Agreement and shall, at the Company's sole cost and expense, maintain the Mesquite Facility in good repair at all times during the Term of this Agreement;

7. Compliance with Laws. The Company shall comply with all federal, state and local laws, ordinances and regulations relating to the ownership and operation of the Mesquite Facility during the Term of this Agreement;

8. Performance of Agreement. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement;

9. Performance of Other Agreements. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreements now or hereafter existing between the Company and the City during the Term of this Agreement; and

10. No Goods or Services. The Company agrees the performance of any or all obligations of the Company under the terms of this Agreement does not constitute the provision of goods or services to the City.

ARTICLE VII

Conditions Precedent to Payment of the Economic Development Incentive

The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Economic Development Incentive to the Company shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the "Conditions Precedent"), to-wit:

1. Construction of Improvements. On or before January 1, 2020, the Company shall have constructed an industrial building on the Land consisting of at least 237,473 square feet substantially as described and/or depicted in **Exhibit "B"** attached hereto and made a part hereof for all purposes (the "Improvements");

2. Payment Request. The Company shall have submitted a Payment Request for the Economic Development Incentive to the City accompanied by a Certificate of Compliance dated effective as of the date of such Payment Request and, as of the date of such Payment Request, all Conditions Precedent set forth herein shall have been satisfied and are then continuing;

3. Capital Investment. The Company shall have made expenditures in the collective amount of at least SIXTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$16,500,000.00) in connection with the Improvements on or before January 1, 2020 (the "Capital Investment"). When calculating such expenditures,

the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;

4. Capital Investment Certificate. On or before March 2, 2020, the Company shall have submitted to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying the amount of expenditures made by the Company in connection with the construction of the Improvements as of January 1, 2020 (the "Capital Investment Certificate") and such Capital Investment Certificate shall confirm that the Company has satisfied the Capital Investment requirement set forth in Article VII, Section 3 above;

5. Completion of the Improvements. The Improvements shall have been substantially completed on or before January 1, 2020 as evidenced by the issuance by the City of a final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the building permit issued by the City in connection with the construction of the Improvements;

6. Payment of Fees. The Company shall have timely paid to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with the Improvements including, without limitation, all Water, Wastewater and Roadway Impact Fees and the City shall have confirmed receipt of all such impact fees, permit fees, development fees, review fees and inspection fees;

7. Maintenance Obligations. The Mesquite Facility shall be in compliance with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City as of the date of the Payment Request for the Economic Development Incentive and the Improvements shall be in good repair and condition;

8. Lease of Improvements. The Company shall have leased at least 79,000 square feet of the Improvements to a tenant for manufacturing, storage and/or distribution of goods for a primary term of at least five (5) years with a commencement date of no later than December 31, 2020 and shall have provided a copy of such lease executed by the Company and such tenant to the City no later than December 31, 2020;

9. Certificate of Occupancy. A Certificate of Occupancy shall have been issued to a tenant of the Company authorizing such tenant to occupy at least 79,000 square feet of the Improvements for the manufacturing, storage and/or distribution of goods and such tenant shall have moved into and shall have commenced operating the tenant's business at or from at least 79,000 square feet of the Improvements;

10. Valuation of Mesquite Facility. The valuation of the Land and Improvements as appraised by DCAD as of January 1, 2020 shall be at least THIRTEEN MILLION AND NO/100 DOLLARS (\$13,000,000.00);

11. Records and Reports. The Company shall have delivered to the City copies of such invoices, paid receipts, payment records and such other documentation as the City may reasonably request to confirm compliance by the Company with the Conditions Precedent;

12. Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Mesquite Facility as of the date of the Payment Request;

13. Performance of this Agreement. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and no Company Default shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement;

14. Performance by the Company of other Agreements. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreement(s) now and hereafter existing between the Company and the City and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Company under the terms of such agreement(s);

15. Inspection. At the option of the City, the City shall have inspected the Mesquite Facility to confirm the Company's compliance with the terms and provisions of this Agreement; and

16. No Conviction for Undocumented Workers. As of the date of the execution by the Company of the Certificate of Compliance and as of the date of the payment by the City to the Company of the Economic Development Incentive (hereinafter defined) the Company shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Company at the Mesquite Facility or at any other branch, division or department of the Company.

ARTICLE VIII

Economic Development Incentive

1. Economic Development Incentive. The City hereby approves, subject to the Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in the amount equal to fifty percent (50%) of the Water, Wastewater and Roadway Impact Fees paid by the Company to the City in connection with the construction of the Improvements up to a maximum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) (the "Economic Development Incentive").

2. Payment of Economic Development Incentive. Provided all Conditions Precedent have been satisfied and are then continuing, and subject to the covenants and limitations set forth in this Agreement, the City will pay the Economic Development Incentive to the Company in one (1) installment within sixty (60) days after the date all Conditions Precedent including, without limitation, the issuance of a Certificate of Occupancy to a tenant of the Company for the occupancy by such tenant of at least 79,000 square feet of the Improvements for the manufacturing, storage and/or distribution of goods, have been satisfied and are then continuing.

3. Limitation of Economic Development Incentive. Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that the maximum collective amount of the Economic Development Incentive payable under the terms of this Agreement is the sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00). If there is any conflict between this Article VIII, Section 3 and any other term or provision of this Agreement, this Article VIII Section 3, shall control.

4. Funds Available for Payment of Economic Development Incentive. The Economic Development Incentive payable by the City to the Company as more fully set forth in this Agreement is not secured by a pledge of ad valorem taxes, financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City or payable from the Water, Wastewater and Roadway Impact Fees paid by the Company to the City. The Economic Development Incentive payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. The Parties agree no other source of funds of the City is subject to the payment of the Economic Development Incentive. The Economic Development Incentive is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Economic Development Incentive is to be paid. This Article VIII, Section 4 shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX

Defaults Recapture of Incentives Remedies

1. Company Default. The Company shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; (ii) upon any assignment of this Agreement by the Company in violation of Article X, Section 1 of this Agreement; or (iii) if the Company fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Company under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City to the Company (each a "Company Default").

2. City Remedies. In the event of a Company Default, the City shall have no obligation to pay the Economic Development Incentive to the Company and the City shall have the right to: (i) terminate this Agreement by written notice to the Company; (ii) recapture fifty percent (50%) of the Economic Development Incentive previously paid by the City to the Company plus interest as more fully set forth in Article IX, Section 3 below; and (iii) exercise any and/or all other rights and/or remedies available to the City pursuant to the laws of the State of Texas, provided however, the City shall not be entitled to the recovery of attorneys' fees or consequential, punitive, exemplary

or speculative damages.

3. Recapture of Economic Development Incentive. In the event of a Company Default, the Company shall immediately pay to the City, at the City's address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to fifty percent (50%) of the Economic Development Incentive previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the Economic Development Incentive being recaptured from the date the Economic Development Incentive was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 3, the Company shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums.

4. City Default. The City shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the City; or (ii) if the City fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the Company to the City (a "City Default").

5. Company Remedies. Upon the occurrence of a City Default, the Company shall have the right to terminate this Agreement by written notice to the City. The City and the Company acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

- (i) the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00);
- (ii) the recovery of damages against the City shall not include consequential, punitive, exemplary, or speculative damages;
- (iii) the Company shall not recover attorney's fees; and
- (iv) the Company shall not be entitled to specific performance or injunctive relief against the City.

6. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article IX shall expressly survive the expiration or termination of this Agreement.

ARTICLE X

Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company may not be assigned or transferred by the Company without the prior written consent of the City, which may be withheld in the City's sole discretion. In the event the Company is a real estate investment trust, a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the real estate investment trust, or the sale, transfer or assignment of a controlling interest in the shares of the Company, or the sale, transfer or assignment of a controlling interest in the membership interests of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. In the event the Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is the Company's general or managing partner shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of

such shares, membership interests or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. Furthermore, neither the Company nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, encumber or otherwise transfer any interest in any receivables under this Agreement or any part hereof, or the interest of the Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. No assignment of this Agreement shall contain any terms in contravention of any provisions of this Agreement. No assignment of this Agreement shall be effective unless: (i) the assignment is in writing signed by the assignor and the assignee; (ii) the assignee assumes the assignor's obligation to timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the assignor under the terms of this Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) the City has approved such assignment in writing. Every assignee shall be subject to and bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by the Company and in the event the Company attempts to assign this Agreement in violation of this Article X, Section 1, the City shall have the right to terminate this Agreement by written notice to the Company.

2. Notices. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be deemed properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective and deemed delivered only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY: Prologis, a Maryland real estate investment trust
c/o Prologis, L.P.
2021 McKinney Ave, Suite 1050
Dallas, Texas 75201
Attn: Jon Sorg
Phone: 972-884-9218

CITY: City of Mesquite
1515 N. Galloway Avenue
Mesquite, TX 75149
Attention: City Manager

With a copy to: Director of Economic Development
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

With a copy to: City Attorney
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

3. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Company to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

4. Remedies Cumulative. The Parties hereby agree that each right and remedy of the Parties provided for in this Agreement shall be cumulative.

5. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

6. Modification. This Agreement may only be revised, modified or amended by a written document signed by the City and the Company. Oral revisions, modifications or amendments are not permitted.

7. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

8. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

9. Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas and agree to submit to the personal and subject matter jurisdiction of such courts.

10. **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.** THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.

11. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

12. No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

13. No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

14. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

15. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

16. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

17. Authority. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Company represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Company has the authority to sign this Agreement on behalf of the Company.

18. City Council Authorization. This Agreement was authorized by resolution of the City Council approved at a City Council meeting.

19. Usury Savings Clause. The Company and the City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Article X, Section 19 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Article X, Section 19 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

20. Non-Collusion. The Company represents and warrants that neither Company nor anyone on the Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement.

21. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

22. Execution of Agreement by Parties. If this Agreement is not executed by the Company and the City on or before October 4, 2019, this Agreement will be null and void and of no force or effect.

23. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

ATTEST:

**CITY OF MESQUITE,
a Texas home rule municipality**

By: _____

Sonja Land
City Secretary

Date: _____

By: _____

Name: Cliff Keheley
Title: City Manager

Date: _____

APPROVED AS TO FORM:

City Attorney or his Designee

[SIGNATURES CONTINUE ON NEXT PAGE]

COMPANY:

Prologis, a Maryland real estate investment trust

By: 

Name: Jon Sorg

Title: Senior Vice President _____

Date: 8/5/19

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

BEING a 14.10 acre tract of land situated in the City of Mesquite, Dallas County, Texas, being situated in the Isaac Beeman Survey, Abstract Number 82, and being a part of that tract of land described in deed to the Buckner Orphans Home, recorded in Volume 2595, Page 436, Deed Records of Dallas County, Texas, (D.R.D.C.T.), said 14.10 acre tract of land being more particularly described as follows:

BEGINNING at a found X cut on a 3-inch diameter brass Texas Department of Transportation right-of-way monument in concrete four inches below ground level, having Texas State Plane North Central Zone 4202 Grid Coordinates of North 6,978,215.5064 feet and East 2,528,989.1705 feet, said point being on the south right-of-way line of U.S. Highway 80 (a variable width right-of-way), said point also being the southeast corner of that certain tract of land as described in deed to the State of Texas in Volume 76140, Page 1661, D.R.D.C.T., said point also being on the east line of said Buckner Orphans Home tract, said point also being on the west line of the Big Town Addition, an addition to the City of Mesquite, according to the plat thereof recorded in Volume 37, Page 215, Map Records of Dallas County, Texas, (M.R.D.C.T.);

THENCE South 00 degrees 37 minutes 50 seconds East, departing said south right-of-way line and along the common line between said Buckner Orphans Home tract and said Big Town Addition, a distance of 719.81 feet to a found PK nail for corner, said point being the northeast corner of a 30.72 acre tract of land described in deed to Prologis Trust, recorded in Volume 2002110, Page 13249, D.R.D.C.T.;

THENCE North 89 degrees 53 minutes 54 seconds West, departing said common line and along the north line of said Prologis tract, a distance of 968.70 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped HALFF ASSOC. INC. (hereinafter referred to as "with cap") for corner;

THENCE North 00 degrees 01 minute 22 seconds East, departing said north line, a distance of 538.02 feet to an "X" in concrete set on the aforementioned south right-of-way line of U.S. Highway 80, D.R.D.C.T.;

THENCE North 77 degrees 46 minutes 21 seconds East, along said south right-of-way line, a distance of 439.95 feet to a point for corner from which a found brass TxDOT monument with an X cut in concrete bears South 18 degrees 58 minutes 41 seconds East, a distance of 0.42 feet, said point being the point of tangency of a tangent circular curve to the right having a radius of 2,849.79 feet and whose chord bears North 79 degrees 31 minutes 16 seconds East, a distance of 173.90 feet;

THENCE Northeasterly, continuing along said south right-of-way line and along said circular curve, through a central angle of 03 degrees 29 minutes 49 seconds, for an arc distance of 173.93 feet to a point for corner from which a found brass TxDOT monument with an X cut in concrete bears South 19 degrees 48 minutes 21 seconds East, a distance of 0.35 feet;

THENCE North 81 degrees 16 minutes 10 seconds East, continuing along said south right-of-way line, a distance of 363.80 feet to the POINT OF BEGINNING AND CONTAINING 614,164 square feet or 14.10 acres of land, more or less.

Depiction of Improvements

