

**OAKLAND ARMY BASE ENVIRONMENTAL REVIEW**  
**FUNDING AND INDEMNITY AGREEMENT ASSOCIATED WITH INITIAL**  
**PROJECT APPROVALS**

This Oakland Army Base ("**OARB**") Environmental Review Funding and Indemnity Agreement ("**Agreement**") is made and entered into this day 23 of October, 2012 ("**Effective Date**"), by and between Prologis, LP, a Delaware limited partnership ("**Prologis**"), and CCIG Oakland Global, LLC, a California limited liability company ("**CCIG**") (or Prologis' and CCIG's related or affiliated entities) (collectively "**Developer**"), and the City of Oakland, acting both in its capacity as an independent municipal corporation and as the successor agency to the Redevelopment Agency of the City of Oakland (together the "**City**"), each a "**Party**," collectively the "**Parties**," to this Agreement.

**RECITALS**

A. The City, through its predecessor in interest, the Redevelopment Agency of the City of Oakland ("**Agency**"), and the Developer, themselves or through their respective predecessors in interest, entered into that certain Exclusive Negotiating Agreement ("**ENA**"), dated January 22, 2010, for the potential redevelopment of a portion of the former OARB, including (inter alia) the City's remediation of Hazardous Materials and development of the public infrastructure ("**Public Improvements**") and Developer's construction and operation of a mixed-use project, including logistics and warehousing, commercial, including billboards, maritime, rail, open space uses and other approved uses ("**Private Improvements**"). Together the Public Improvements and the Private Improvements constitute the "**Project**".

B. To effectuate the Project, the City Council will consider (1) the approval a Lease Disposition and Development Agreement ("**LDDA**") for approximately 140 acres of the OARB ("**LDDA Property**") and related, attached agreements and (2) the adoption of an Initial Study/Addendum, the "**Environmental Document**" (together, "**Initial Project Approvals**").

C. The ENA was amended on August 10, 2010 by a First Amendment to the ENA (the "**First Amendment**").

D. The First Amendment provided that the Agency shall contract with LSA Associates, Inc. ("LSA") to prepare the Environmental Document. LSA's contract for the Environmental Document was not to exceed three hundred and sixty thousand dollars (\$360,000). The LSA costs have exceeded the agreed upon maximum contract cost of three hundred and sixty thousand dollars (\$360,000). The final amount of all third-party contractor Environmental Document Preparation Costs (defined below) has not been determined, but is currently anticipated be about five hundred and three thousand dollars (\$503,000).

E. In accordance with the public-private nature of this Project and additional Environmental Document costs beyond those originally anticipated and to avoid any disputes, the Parties desire to set forth their final cost sharing agreement for Environmental Document preparation and processing ("**Environmental Document Preparation Costs**") associated with Initial Project Approvals.

F. In accordance with the public-private nature of the Project, the Parties also desire to set forth the litigation review process and indemnity provisions related to the Initial Project Approvals.

G. The Parties enter this Agreement separately from the LDDA and its attached agreements associated with the Initial Project Approvals such that if any of those agreements are not executed, or if executed and subsequently terminated or invalidated, this Agreement will survive such non-execution or termination.

## **AGREEMENT**

**NOW THEREFORE**, in accordance with the following terms, the Parties agree as follows:

1. **Incorporation of Recitals.** The Parties agree that the Recitals set forth above are true and correct and are incorporated herein.

2. **Funding of Environmental Document Preparation Costs.** The Environmental Document Preparation Costs associated with Initial Project Approvals shall be shared by the City and Developer pursuant to the terms of this section.

a) The Parties shall equally share the portion of the Environmental Document Preparation Costs related to costs and fees charged to the City by any third-party contractor (excluding attorney fees, which shall be the responsibility of the party retaining the attorney) up to five hundred and three thousand dollars (\$503,000).

b) Developer's payment of its share of Environmental Document Preparation Costs is due within ten (10) days of the City's compliance with subsections (1) through (3) Section 2.2.1 of the LDDA.

c) Any Environmental Document Preparation Costs in excess of five hundred and three thousand dollars (\$503,000) shall be paid for by the City.

d) Developer shall not pay Environmental Document Preparation Costs associated with City staff or City attorney review or processing.

e) The City shall seek reimbursement of the Environmental Document Preparation Costs from all other developers with projects on the City-owned OARB property that rely on the Environmental Document. Such reimbursement shall be based on a "fair share" allocation calculated on a per acre basis (of the City-owned OARB property) and due no later than the earlier to occur of (i) the effective date of any conveyance agreement between the City and such developer (including, but not limited to, any purchase agreement, lease, ground lease, (lease) disposition and development agreement or similar document) and (ii) the approval of the applicable project. Such payments shall be distributed by the City to the City and Developer on a pro rata basis, based on the percentage of costs paid by a Party pursuant to Sections 2(a) and 2(c) above.

f) In the event the LDDA with Developer is terminated for any reason other than default by Developer, the City shall undertake commercially reasonable efforts to seek reimbursement from any future developer of a project on the LDDA Property (or portion thereof) that relies on the Environmental Document for its approval. Such payments shall be distributed first to Developer to reimburse its full share of the Environmental Document Preparation Costs, after which time any additional reimbursement shall be kept solely by the City. If the LDDA terminates because of a default by Developer, then the City has no obligation to reimburse Developer for Environmental Document Preparation Costs pursuant to this Section 2(g).

3. **Initial Project Approval Litigation Review Process and Indemnification.** The litigation defense indemnification required for Initial Project Approvals shall be pursuant to the terms of this section. As a public-private partnership, the City and Developer agree to the following process for indemnifying the City and determining whether to proceed in defending any litigation action brought after the Effective Date of this Agreement that may be brought by a third party against the City to attack, set aside, void or annul the Initial Project Approvals ("**Action**"):

a) Developer's ENA deposit of fifty thousand dollars (\$50,000) shall, at the time the ENA is terminated, remain with the City as security for litigation costs related to defense of any Action associated with the Initial Project Approvals until distributed pursuant to Section 3(e) below. Said security deposit may be drawn down as provided for in subsection (e), below.

b) If an Action is filed, upon receipt of the petition, the Parties will have 20 days to meet and confer regarding the merits of the Action and to determine whether to defend against the Action, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines. The City and Developer mutually commit to meet all required litigation timelines and deadlines.

c) If the Parties mutually agree to defend against the Action, the Parties shall defend jointly, with counsel acceptable to the City and Developer, and enter a joint defense agreement, which will include among other things, provisions regarding confidentiality, appeals and a cost allocation pursuant to which Developer shall reimburse the City for its prorata share of costs (to be calculated based on the lease area as compared to the overall acreage of land covered in the Environmental Document project description) incurred defending the Action and fulfilling any judgment, including all appeals as set forth in that agreement.

d) If the City elects, in its sole and absolute discretion, not to defend against the Action, it shall deliver written notice to Developer, and if Developer elects to defend against the Action without the City's participation, Developer shall defend, indemnify, and hold harmless the City, the City Council, and its respective agents, officers, and employees from any liability, damages, claim, action, cause of action, judgment (including City costs to effectuate such

judgment), loss (direct or indirect), or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs).

e) If Developer elects, in its sole and absolute discretion, not to defend against the Action, it shall deliver written notice to the City regarding such decision. Developer shall owe the City for its prorata share (based on the lease area as compared to the overall acreage of land covered in the Environmental Document project description) of: (i) any third party or City attorney fees and legal costs incurred by the City through date of such notice, and (ii) any petitioner incurred attorney fees and legal costs through the date of such notice. Because the final accounting of petitioner-incurred attorney fees and legal costs will not be definitively known until the close of the Action, including all appeals and motions for attorney's fees, the Parties agree they shall, within ten (10) days of the Developer's notice, meet and confer in an effort to estimate the attorneys' fees and costs incurred by the petitioner in filing the Action. If the sum of the amount in clause (i) of the preceding sentence plus one hundred and fifty percent (150%) of the amount set forth in clause (ii) of the preceding sentence is less than the ENA deposit, the City shall refund the excess amount to Developer. If the sum is higher, Developer shall pay any shortfall to the City. The refund or payment, as applicable, shall be paid within ninety (90) days after the City's receipt of Developer's notice of its election not to defend against the Action. If the City is ultimately required to or agrees to pay petitioner's legal fees/costs, in conjunction with any settlement or judgment, the City shall request an accounting through the date of Developer's notice in order to facilitate the final accounting. To the extent the amount of the remaining ENA deposit exceeds Developer's obligation, the City shall pay such excess amount to Developer within thirty (30) days after the determination of petitioner's fees/costs award. If the remaining ENA deposit amount is insufficient, the City shall retain the remaining ENA deposit and the Developer shall pay the amount of the shortfall to the City within thirty (30) days of receiving an invoice from the City.

f) If Developer elects not to defend, the City has the right to proceed to defend against the Action at its sole cost and expense, except that the City shall collect such reimbursements as provided for in subsection (e), above.

g) If Developer elects not to defend or share in the City's defense, the City has right to terminate the LDDA and its associated agreements as to Developer.

h) To the extent any costs are recovered from petitioners as a result of the disposition of the Action, such recovered costs shall be distributed to the Parties pro rata pursuant to the amounts incurred by the Parties pursuant to this Agreement.

4. **No Agency Relationship.** This Agreement shall not create any agency or similar relationship among the Parties. Nothing contained in this Agreement is intended to or shall in any way be construed as a waiver of any privilege, protection, claim, right, or defense between any of the Parties on any subject whatsoever.

5. **Notice.** All notice required by this Agreement shall be provided by e-mail and overnight mail at the following addresses:

To City:

Office of the City Administrator

Attention: City Administrator

One Frank H. Ogawa Plaza, 3<sup>rd</sup> Floor

Oakland, CA 94612

And

Office of Neighborhood Investment

Attention: Oakland Army Base Project Manager

250 Frank H. Ogawa Plaza, 5th Floor

Oakland, CA 94612

And

Office of the City Attorney

Attention: Deputy City Attorney- Oakland Army Base Project

One Frank H. Ogawa Plaza, 6th Floor

Oakland, CA 94612

To Developer:

Prologis

Attention: Legal Department

Pier 1, Bay 1  
San Francisco, CA 94111

And

CCIG Oakland Global, LLC  
c/o California Capital & Investment Group, Inc.  
300 Frank H. Ogawa Plaza, Suite 340  
Oakland, CA 94612

6. **Termination.** This Agreement shall remain in full force and effect until all payments and reimbursements required by Section 2 have been made and until any Action against the Initial Project Approvals addressed by Section 3 has been full disposed and all payments and reimbursements required by that Section 3 are made in full.

7. **Waiver.** The failure of any Party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by any Party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other Party.

8. **Remedies.** Each Party acknowledges that specific performance and immediate injunctive relief is an appropriate and necessary remedy for any violation or any threatened violation of this Agreement.

9. **Successors.** This Agreement shall remain in effect and be binding upon successors and assigns, except that Section 2 is personal to Developer and the City's obligation to reimburse Developer shall not be transferred or assigned.

10. **No Third Party Beneficiaries.** As a result of this Agreement, the Parties do not intend to provide any third party with any benefit or enforceable legal or equitable right or remedy.

11. **Full Agreement.** This Agreement sets forth the agreement of the Parties and supersedes and replaces any prior written or verbal agreement on these issues.

12. **Amendments.** Any amendments to this Agreement shall be in writing and signed by all Parties.

13. **Effective.** The foregoing provisions are agreed to and become effective upon signature of each Party set forth below as of the date set forth next to the signature of each Party.

14. **Governing Law.** The rights and obligations of the Parties and the interpretation and performance of this Agreement shall be governed by the laws of California. Any legal action concerning the rights and obligations of the Parties pursuant to this Agreement shall be commenced in Alameda County.

15. **Authority.** The person signing this Agreement on behalf of each Party affirms that such person is authorized to execute this Agreement on that Party's behalf.

16. **Severability.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

17. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document and each signed counterpart shall be deemed an original. Faxed or emailed signature shall be of the same force and effect as original signatures.

SO AGREED:

[Signatures on following page.]



**"CITY"**

City of Oakland, a municipal corporation

By: Deanna Santana

Name: Deanna Santana

Title: City Administrator

Date: 10/23/12

*Attest by City Attorney  
Barbara J. Quinn 10/23/12*

**"DEVELOPER"**

**PROLOGIS, LP**

Mark Hansen  
Print Name

By: [Signature]

Its: Sr. Vice President

Date: 10-23-12

**CCIG OAKLAND GLOBAL, LLC**

PHU TACANH  
Print Name

By: [Signature]

Its: President

Date: 10.23.12