

ORDINANCE NO. 115-15

PASSED: December 21, 2015

ORDINANCE AUTHORIZING MAYOR TO ENTER INTO A DEVELOPMENT AND COMPENSATION AGREEMENT, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF REYNOLDSBURG, OHIO:

SECTION 1. That the Mayor be and is hereby authorized and directed to enter into a Development and Compensation Agreement with Licking County, 20 S. Second Street, Newark, Ohio, 43055, Etna Township, P.O. Box 188, Etna, OH 43018-0188, and Prologis, 383 North Front Street, Suite 1A, Columbus, Ohio, 43215.

SECTION 2. The Development and Compensation Agreement attached hereto as Exhibit 1 and incorporated herein by reference, is approved. The Mayor, the City Auditor, the City Attorney, and Clerk of Council are authorized to execute and deliver such instruments and certificates, and to take such actions as are necessary to effect the creation of the Development and Compensation Agreement.

SECTION 3. That this ordinance is deemed to be an emergency measure necessary for the financial needs of the City and further to allow Prologis to continue forward with their development process in a timely manner; wherefore upon adoption by Council this ordinance shall be in effect immediately upon signature by the Mayor.



Doug Joseph, President of Council

ATTEST: 

April L. Beggerow, Clerk of Council

APPROVED:  DATE 12/21/15

Bradley L. McCloud, Mayor

CERTIFICATE

I, April L. Beggerow, Clerk of Council, City of Reynoldsburg, Ohio do hereby certify the foregoing to be a true and correct copy of Ordinance No. 115-15 as passed by Council of said City on the 21st day of December, 2015 and as recorded in the Record of Proceedings of said Council.



April L. Beggerow, Clerk of Council

Filed with Mayor: 12/21/15

Published: _____

Development and Compensation Agreement

This Development and Compensation Agreement (this "Agreement") is made and entered into effective the ____ day of _____, 2015, by and among the City of Reynoldsburg (the "City"), a political subdivision of the State of Ohio; Etna Township, Licking County, a political subdivision of the State of Ohio, through its Board of Trustees (the "Township"); Licking County, a political subdivision of the State of Ohio, through its Board of County Commissioners (the "County"); and Prologis, a Maryland real estate investment trust ("Prologis").

WITNESSETH:

WHEREAS, pursuant to Ohio Revised Code ("R.C.") Section 3735.671, the County has proposed to enter into a Community Reinvestment Area Agreement with Prologis (the "CRA Agreement," substantially in the form attached hereto as Exhibit A), under which the County is providing a fifteen (15) year, 100% exemption for the assessed valuation of new structures at the Project Site (as defined in the CRA Agreement) and a ten (10) year, 100% exemption for remodeling of new structures at the Project Site; and

WHEREAS, pursuant to R.C. 715.72 et seq., the Township and the City have entered into a Joint Economic Development District Contract (the "JEDD Contract," substantially in the form attached hereto as Exhibit B), under which the Township and the City have agreed to share in the costs of improvements for an area that they designate as a joint economic development district (the "JEDD") for the purpose of facilitating new or expanded growth for commercial or economic development in the state; and

WHEREAS, the boundaries of the JEDD and the Project Site are coterminous; and

WHEREAS, the Township has proposed to pass a tax increment financing ("TIF") resolution (the "TIF Resolution", substantially in the form attached hereto as Exhibit C) declaring the increase in assessed value of the parcels of real property comprising the Project Site to be a public purpose and exempt from real property taxation; provided, however, that the exemption provided pursuant to the TIF Resolution shall not apply to the assessed value of any structures exempted under the CRA Agreement for the period and to the extent that the structures are exempt under the CRA Agreement; and

WHEREAS, the Board of Education of the Southwest Licking Local School District (the "School District") has waived all applicable notice requirements in connection with the CRA Agreement and the TIF Resolution and has approved the CRA Agreement and the TIF Resolution and the real property tax exemptions provided for therein; and

WHEREAS, the Board of Education of the Licking County Joint Vocational School District (the "Joint Vocational School District") has waived all applicable notice

requirements in connection with the CRA Agreement and the TIF Resolution and the real property tax exemptions provided for therein; and

WHEREAS, in connection with the School District's waiver of all applicable notice requirements and its approval of the CRA Agreement and the TIF Resolution and the real property tax exemptions provided for therein, the City and the Township have entered into the JEDD Contract; and

WHEREAS, pursuant to R.C. 5709.82, the County, the Township and Prologis are entering into this Agreement to provide for compensation for tax revenue foregone as a result of the exemptions set forth in the TIF Resolution and the CRA Agreement; and

WHEREAS, because compensation will be provided to the School District through the JEDD Contract, it is necessary to make the City a party to this Agreement; and

WHEREAS, the parties recognize that the exact legal and financing structure used by Prologis in developing, equipping and operating the Project (as defined in the CRA Agreement) may include additional legal entities and may evolve prior to and during the development of the Project; and

NOW, THEREFORE, in consideration of the premises and covenants contained herein and the benefit to be derived by the parties from the execution hereof, the receipt and sufficiency of which are hereby acknowledged, the parties herein agree as follows:

1. Approval of Exemption Agreements and Future Good Faith Negotiation – The County hereby affirms its approval of the CRA Agreement, including the fifteen (15) year, 100% real property tax exemptions and the ten (10) year, 100% real property tax exemptions provided therein.

2. Establishment and Operation of JEDD and TIF

A. The City and the Township have entered into the JEDD Contract in accordance with R.C. 715.72 et seq.

B. The parties agree that the purpose of the JEDD Contract is to facilitate economic development to create or preserve jobs and employment opportunities and to improve the economic welfare of the people in the State, the City, the Township and the District. The City and Township further acknowledge that economic development incentives, such as property tax incentives and tax increment financing, and economic development investments, such as public infrastructure investments and arrangements to fully or partially reimburse developers or end users for certain public infrastructure investments, can play a critical role in competitively positioning the City and Township to attract jobs and economic growth.

C. The City and the Township shall cause the JEDD Board of Directors (the "JEDD Board") at its first meeting to adopt a resolution to levy an income tax at a rate of one

and one-half percent (1.5%) within the JEDD. The income tax shall be used for the purposes of the JEDD and for the purposes of the City and Township pursuant to the JEDD Contract and in accordance with this Agreement. The income tax is levied in the JEDD based on income earned by persons working in the JEDD and on the net profits of businesses located in the JEDD. The rate of the income tax shall remain one and one-half percent (1.5%) and shall not change to equal the highest rate of the income tax levied by the City, or some rate in excess of one and one-half percent (1.5%), but less than said high rate, unless hereafter authorized by a duly approved and executed resolution adopted by the Township Board of Trustees. The income tax shall be administered, collected, enforced and distributed by the City.

D. The City and the Township shall cause the JEDD income tax revenues less refunds (the "Gross Revenue") to be distributed in accordance with this paragraph. The distributions described shall be made at least quarterly, no later than 30 days after the end of each calendar quarter, based on the Gross Revenues collected by the City and deposited into the established City JEDD Fund (the "JEDD Fund") at the end of such calendar quarter. Within the JEDD Fund, the Gross Revenue shall be utilized to (1) pay the City an amount equal to, if any, the Southwest Licking School District Payment ("SWLSD Payment"), described below, for distribution by the City to the School District within thirty (30) days of receipt by the City, (2) repay the City and Township the costs incurred to establish the JEDD, if any, until paid in full, (3) pay the JEDD Board in an amount sufficient to pay the outstanding or expected expenses of the operations of the JEDD for that quarter in accordance with the budget and appropriations resolution (as amended from time to time) of the Board, and for the long term maintenance of the JEDD, in an amount totaling no less than one percent (1%) of the Gross Revenue and not to exceed two percent (2%) of the Gross Revenue, and (4) pay the City an amount not to exceed three percent (3%) of the Gross Revenue to pay the City's expenses to administer the JEDD income tax.

The SWLSD Payment is an amount equal, for the period during which it is due pursuant to this paragraph, to 20% of the Gross Revenue. The SWLSD Payment shall be due until the later of (i) the end of the fifth calendar year after the calendar year in which the cumulative sum of the SWLSD Payments equals two million, two hundred fifty thousand dollars (\$2,250,000), or (ii) the end of the fifteenth calendar year after the first calendar year in which a new building at the Project Site that is larger than 100,000 square feet is first occupied by a tenant or end user.

The amount of Gross Revenue remaining following these payments (the "Net Revenue") shall be distributed quarterly in the manner outlined in this paragraph. For the duration of the JEDD Contract, the Net Revenue shall be distributed as follows: (1) to the City, an amount equal to twenty percent (20%) multiplied by the sum of the Net Revenue and the SWLSD Payment, if any; (2) to the Board Improvement Account (as defined in the JEDD Contract), an amount equal to ten percent (10%) multiplied by the sum of the Net Revenue and the SWLSD Payment, if any; and (3) to the Township, an amount equal to the Net Revenue minus the sum of the amount paid to the City and the Board Improvement Account pursuant to this paragraph.

The City shall make provision in each annual appropriation measure for the payments from the JEDD Fund required by this Agreement.

E. Prologis agrees to expend up to \$4,000,000 to construct or cause to be constructed, or to contribute toward the construction of, public infrastructure improvements (as defined in R.C. 5709.40(A)(7)) that are within the JEDD, that are contiguous to the JEDD, or that benefit the JEDD. The City, the Township and the County shall cause the JEDD Board and the Board of Trustees of the Township to negotiate in good faith with Prologis and enter into an agreement or agreements that will directly or indirectly reimburse – including, but not limited to, through the issuance of bonds – Prologis for all of the items of “costs of permanent improvements” set forth in R.C. Section 133.15(B) incurred directly or indirectly by Prologis or its designees in accordance with this subsection 2.E, including interest costs. Prologis hereby agrees that the amount for which it will be reimbursed is limited to costs of public infrastructure improvements (as defined in R.C. 5709.40(A)(7)) in the current or future publicly-owned rights of way, in public easements or in utility easements. The reimbursement shall be from a combination of JEDD income tax revenues deposited into the JEDD Improvements Account, JEDD revenues received by the Township, and TIF service payments, and shall take place in accordance with the following:

a. The Township agrees that the net TIF service payments (after a portion of the TIF service payments are paid to the School District and Joint Vocational School District as provided in the TIF Resolution) shall be deposited into the Etna/Prologis Account (the “TIF Account”) of the Etna Township Public Improvement Tax Increment Equivalent Fund to be created in the TIF Resolution. The Township agrees that the net TIF service payments deposited into the TIF Account shall be used to make public infrastructure improvements (as defined in R.C. 5709.40(A)(7)) that directly benefit the parcels comprising the JEDD, including but not limited to public infrastructure improvements to be constructed by Prologis in accordance with this subsection 2.E.

b. The parties hereto agree that with respect to the amounts paid to Prologis by the JEDD Board from amounts deposited into the Board Improvement Account and by the Township from amounts received from the JEDD and from amounts deposited into the TIF Account, (i) the reimbursement paid to Prologis by the JEDD Board shall be equal to 100% of the amount deposited into the Board Improvement Account through the end of the fifth calendar year after the first calendar year in which a new building at the Project Site that is larger than 100,000 square feet is first occupied by a tenant or end user, 75% of the amount deposited into the Board Improvement Account for the next five calendar years, and 50% of the amount deposited into the Board Improvement Account in all years thereafter until Prologis is fully reimbursed under the agreement or agreements entered into under this Section, (ii) the reimbursement paid to Prologis by the Township from its JEDD revenues shall be equal to 50% of the amount received by the Township from the JEDD through the end of the fifteenth calendar year after the first calendar year in which a new building at the Project Site that is larger than 100,000 square feet is first occupied by a tenant or end user and shall cease thereafter, (iii) the reimbursement paid to Prologis by the Township from the TIF Account shall be equal to 50% of the amount deposited into the TIF Account each year until Prologis is fully reimbursed under the

agreement or agreements entered into under this Section, and (iv) from the remainder of the funds in the TIF Account each year beginning with the sixteenth year in which the Township receives revenues in the TIF Account (after making the payment required under subparagraph (iii)), the Township may reimburse itself for the amounts paid to Prologis under subparagraph (ii) in amounts annually equal to two times the amount paid to Prologis in accordance with that subparagraph for the corresponding year during the first fifteen years after a new building at the Project Site that is larger than 100,000 square feet is first occupied by a tenant or end user. For example, if the Township reimbursed Prologis \$1,000 in year 1, the Township may reimburse itself up to \$2,000 in year 16. If the remainder of the funds in the TIF Account are insufficient to reimburse the Township twice the amount of the corresponding year, amounts owed to the Township shall be paid in subsequent years when available, after first making the payment required under subparagraph (iii) (i.e. if the Township is owed \$2,000 in year 16 but TIF revenues only equal \$3,000, \$1,500 shall be reimbursed to Prologis, \$1,500 shall be reimbursed to the Township, and the remaining \$500 owed to the Township shall be reimbursed in subsequent years when such funds are available after paying Prologis in the subsequent years). To the extent the amount reimbursed to the Township exceeds the amount paid by the Township under subparagraph (ii), such amount must be used for costs of public infrastructure improvements that directly benefit the Property, in accordance with the TIF Resolution and applicable Ohio law.

c. Except as provided in Section 2.E of this Agreement with respect to public infrastructure improvements made by Prologis, the parties agree that the JEDD Board shall have discretion to determine the improvements that will be made from amounts deposited into the JEDD Improvements Account, provided that all such improvements must be made within the Township.

F. The City and the Township agree that the JEDD Contract shall continue in existence for be for fifty (50) years, provided however, that if both parties agree in writing, the JEDD Contract may be terminated after twenty-five (25) years. Additionally, the JEDD Contract shall automatically renew for two (2) additional twenty five (25) year terms, unless the City or Township provides written notice of termination not later than two (2) years prior to the expiration of the original term or each additional term.

G. The JEDD Board shall consist of five members, one member representing the City, one member representing the Township, one member representing the owners of businesses located within the District, one member representing the persons working within the District, and one member selected by the other members to serve as chairperson of the Board.

3. Compensation Payments

A. The Township agrees that the payments it will receive through the City pursuant to Section 2.D of this Agreement shall be the only compensation it is obligated to receive attributable to tax revenue foregone as a result of the CRA Agreement. The Township agrees not to seek additional payments from the County, the City or Prologis in connection with the Project (as defined in the CRA Agreement), this Agreement, the CRA Agreement or the

JEDD Contract; provided, however, this section shall not prohibit Prologis from making voluntary payments or voluntary in-kind contributions.

B. Pursuant to R.C. 5709.82(B)(1), the Township expressly consents to the amounts to be received by it under the terms of this Agreement, irrespective of the relationship of the amounts to be received under this Agreement to the tax revenue foregone by it under the CRA Agreement.

C. For each building exempted from taxation under the CRA Agreement, beginning in the tax payment year for the first tax year of the CRA exemption for that building and continuing through the tax payment year for the last tax year of the CRA exemption for that building, the owner of the building as of March 31 of the tax payment year (the "Supplemental Payment Date") shall make a payment to the School District in an amount equal to one and one-half cents (\$.015) per leasable square foot as reasonably determined by the project architect in accordance with standards established by Building Owners and Managers Association International (a "Supplemental Payment"). Each Supplemental Payment shall be made on or before the Supplemental Payment Date. This obligation shall be a covenant running with the land and shall be memorialized in a declaration of covenants recorded by the owner before the owner files the applicable CRA exemption application described in R.C. 3735.67 with the CRA housing officer.

4. Cooperation by Property Owner

A. Prologis agrees to support the establishment of the JEDD Contract and to refrain from using any resources in opposition to the establishment of the JEDD Contract.

B. Prologis agrees to cooperate with the Township, the City and the JEDD Board in connection with the administration of the JEDD Contract, including the imposition of the JEDD income tax. Prologis agrees to include one or more provisions in leases or purchase contracts executed for real property within the JEDD to make tenants and other assignees aware of the JEDD income tax and to prohibit lessees and assignees from challenging the validity of the JEDD Contract or the JEDD income tax. The parties acknowledge that Prologis cannot restrict the political or legal rights of employees of its tenants and assignees.

5. Remedies – The parties agree that any of the parties to this Agreement may seek to have a default by any party hereto remedied through an action for monetary damages or an action for specific performance.

6. Miscellaneous

A. This Agreement and the benefits and obligations hereof may be assigned in whole or in part by Prologis to any of its affiliates or to any future tenants in the JEDD or property owners in the JEDD. This Agreement and the benefits and obligations hereof are not transferable or assignable, in whole or in part, by the County, the City or the Township without

the express, written approval of all of the other parties to this Agreement, which approval shall not be unreasonably withheld.

B. The School District is an intended third-party beneficiary of this Agreement with respect to any payments to be made to the School District hereunder with a right to enforce such provisions.

C. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

D. Except as noted below, the parties and their agents are prohibited from challenging, directly or indirectly, the validity of any of the following agreements and/or legislation or the tax exemptions granted therein (the "Key Agreements"): this Agreement; the JEDD Contract, including the JEDD income tax or any resolution authorizing the JEDD income tax; the TIF Resolution; the CRA Agreement; and any reimbursement agreement executed pursuant to Section 2.E of this Agreement. In that regard, the parties waive any defects in any proceedings related to the Key Agreements. If the validity of any of the Key Agreements is challenged by any entity or individual, whether private or public, the County, the City, the Township and Prologis, with each bearing its own costs, shall advocate diligently and in good faith in support of the validity of the challenged agreement. The restrictions and requirements of this Section 6.D are not applicable to any party seeking to enforce its rights under one of the Key Agreements against a party that is in default of that Key Agreement, provided that the challenge must be reasonably related to the default.

E. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements, undertakings of every kind and nature between the parties with respect to the subject matter of this Agreement.

F. If any provision of this Agreement or the application of any such provision to any such person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, all of which other provisions shall remain in full force and effect; and, if any provision of this Agreement is capable of two constructions one of which would render the provision invalid, then such provision shall have the meaning which renders it valid.

G. Any amendments to this Agreement must be in writing and be signed by all of the parties to this Agreement or their successors.

H. Any captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

I. Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of any party to this Agreement shall be made in writing addressed as follows and sent by registered or certified mail, return receipt requested, and shall be deemed delivered when the return receipt is signed, refused or unclaimed:

If to the County, to:

President
Licking County Board of County Commissioners
20 South Second Street
Newark, OH 43055

With a copy to:

Director
Licking County Planning Commission
20 S. Second Street
Newark, OH 43055

If to the Township, to:

President
Etna Township Board of Trustees
P.O. Box 188
Etna, OH 43018-0188

If to the City, to:

Mayor
City of Reynoldsburg
7232 E. Main Street
Reynoldsburg, OH 43068

With a copy to:

Development Director
City of Reynoldsburg
7232 E. Main Street
Reynoldsburg, OH 43068

If to Prologis, to:

Brian N. Marsh
Senior Vice President
Prologis
383 North Front Street, Suite 1A
Columbus, OH 43215

With a copy to:

Scott J. Ziance, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215

or to any such other persons or addresses as may be specified by any party, from time to time, by prior written notification.

IN WITNESS WHEREOF, the parties have executed this Agreement to become effective as of the ___ day of _____, 2015.

LICKING COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____

Its: _____

Date: _____

ETNA TOWNSHIP BOARD OF TRUSTEES

By: _____

Its: _____

Date: _____

CITY OF REYNOLDSBURG

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

City Attorney, Reynoldsburg, Ohio

PROLOGIS

By: _____

Its: Senior Vice President

Date: _____

STATE OF _____,

COUNTY OF _____, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of _____, _____, by _____, the _____ of the Board of County Commissioners of Licking County, Ohio, a political subdivision of the State of Ohio, on behalf of the political subdivision.

Notary Public

STATE OF _____,

COUNTY OF _____, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of _____, _____, by _____, the _____ of the Etna Township Board of Trustees, Ohio, a political subdivision of the State of Ohio, on behalf of the political subdivision.

Notary Public

STATE OF _____,

COUNTY OF _____, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of _____, _____, by _____, the _____ of the City of Reynoldsburg, Ohio, a political subdivision of the State of Ohio, on behalf of the political subdivision.

Notary Public

STATE OF _____,

COUNTY OF _____, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of _____, _____, by Brian N. Marsh, the Senior Vice President of Prologis, a Maryland real estate investment trust, on behalf of the trust.

Notary Public

Exhibit A to DC Agreement

Form of CRA Agreement

Exhibit B to DC Agreement

Form of JEDD Contract

Exhibit C to DC Agreement

Form of TIF Resolution