### After Recording, Return Document to:

Portland Parks & Recreation City of Portland 1120 SW 5<sup>th</sup> Ave., Ste. 1302 Portland, OR 97204 Attn: Property Manager Multnomah County Official Records E Murray, Deputy Clerk

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### TRAIL EASEMENT

This Trail Easement Agreement (this "Easement") is made and entered into this LO+ day of June, 2019, (the "Effective Date") between Prologis, L.P., a Delaware limited partnership, ("Grantor") the owner in fee simple of the real property described in the attached Exhibit A (the "Property" described in the "Public Trail Easement Description") in the City of Portland, Multnomah County, Oregon and THE CITY OF PORTLAND ("City" and "Holder"), by and through its Bureau of Parks and Recreation, an Oregon municipal government, collectively the "Parties."

### **RECITALS**

- A. Grantor is the owner in fee simple of the real property commonly known as Tax Parcels R318622 and R318581. The State Property ID numbers for the Property are IN, 2E, Section 24, TL 1100 and 1N, 2E, Section 24AD, TL 600, respectively, and legally described in Exhibit A attached hereto.
- B. Grantor seeks to build a public trail over and across the portion of the Property described herein as the Easement Area.
- C. Holder is an Oregon municipal government whose purpose, among other things, is to facilitate the building, operation and maintenance of public trails that will enjoy public access.
- D. Holder desires to acquire the easement over and across the Easement Area described herein in order to complement other easements and rights obtained or to be obtained by Holder to establish public access over and across a public trail along the area adjacent to or nearby the Columbia Slough, commonly referred to as the "Columbia Slough Trail", a portion of which will traverse property not owned by Grantor, but that is adjacent to Grantor's Property.
- E. Grantor desires to grant to Holder and Holder desires to accept from Grantor, an easement over the Easement Area described below for public trail purposes in accordance with the terms and conditions set below.

In consideration of the recitals and the mutual benefits, covenants, and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby dedicates and grants, and Grantor and Holder hereby

covenant and agree, as follows:

#### **AGREEMENT**

- 1. Grant of Easement. The Grantor hereby grants to Holder for the benefit of the public a perpetual, nonexclusive, affirmative easement to use a strip of land 25' wide across the Property for a public trail ("Easement Area"). The location of the Easement Area is described and depicted in the attached Exhibit A. Holder shall have the right of ingress and egress to and from the Easement Area, for purposes consistent with its rights and obligations under this Trail Easement agreement. The right of ingress and egress includes the right to enter the Easement Area to address safety issues in the Easement Area that become known to Holder.
- 2. <u>Purpose</u>. The purpose of this Easement is to provide public access to and along the Columbia Slough Trail by creating a public trail over and across the Easement Area, in accordance with Portland City Code 33.272.
- 3. Scope of Public Use. The public shall have the right to use the Easement Area as a public recreational trail in accordance with Portland City Code 33.272. Pursuant to City Code Chapter 33.272, public use of the Easement Area is subject to Chapter 12 (Prohibited Conduct) of Title 20 (Parks and Recreation) of the Portland City Code, as currently enacted or hereafter amended, as well as any rules, regulations, and policies of Portland Parks and Recreation promulgated pursuant thereto, unless specifically stated otherwise herein.
- Scope of Grantor's Use. The Grantor shall have the right to use the Easement Area for all 4. purposes consistent with the exercise by the public of the rights granted herein. commercial activities shall be conducted in the Easement Area by any party. Without limiting the foregoing, Grantor shall retain the right to access, use, and enjoy the Easement Area for its purposes consistent with the rights granted and reserved herein, including the right to cross the Easement Area whether on foot or by motorized or non-motorized vehicle, in connection with the inspection, ownership, operation, improvement or repair of Grantor's adjacent and nearby property(ies). Grantor is prohibited, however, from engaging in any activity on, or use of, the Easement Area that (i) is inconsistent with the terms of this Easement, or (ii) materially interferes with or impairs the use of the Trail (described below) by Holder or the public. Without limiting the generality of the forgoing, from and after completion of the Trail, the following activities and uses by Grantor within the Easement Area are expressly prohibited without the express written consent of the Holder, except as reserved above or as required in connection with the improvement of the Trail (described below) as approved by Holder:
  - a. Constructing any improvements or structures, parking any vehicles, installing any paving or gravel, or storing any personal property;
  - b. Blocking, obstructing, or interfering with Holder's access through the Easement Area:
  - c. Excluding any persons from using the Trail, provided that such use is in accordance with the terms of this Easement, or taking any other action that unreasonably

- prevents or interferes with public entry onto the Trail and Trail Facilities, including without limitation imposing a fee or charge of any kind;
- d. Destroying, spraying with biocides, or removing any vegetation trees, plants, or shrubs, provided Holder is regularly maintaining the Easement Area in reasonably good condition and Grantor has notified Holder of any maintenance concerns;
- e. Planting any vegetation, including, without limitation, any trees, shrubs, grasses, or seeds of any kind;
- f. Placing or erecting any signs, billboards, or other advertising material, temporary or permanent;
- g. Dumping or storing ashes, trash, rubbish, garbage, sawdust, lawn cuttings, leaves, compost, or other material or substances;
- h. Filling, excavating, digging, dredging, mining, quarrying, removing, or disturbing the topsoil, sand, gravel, rock, minerals, or other materials;
- i. Damming, dredging, or undertaking any other activities that may be detrimental to water quality; and,
- j. Taking any action that damages fish or wildlife, or their habitats; alters existing vegetation or drainage patterns, flood plains, wetlands, or the natural condition of the Easement Area; or results in erosion, siltation, or other forms of pollution.
- 5. <u>Alterations and Enhancements.</u> Except as otherwise allowed herein, Grantor shall not construct any improvement in the Easement Area without first obtaining the written approval of Portland Parks and Recreation ("PP&R") and the City's Bureau of Development Services.
- Hazardous Substances. Grantor represents that to the best of its knowledge (i) Grantor's 6. current use of the Easement Area is in material compliance with all local, state and federal environmental laws and regulations, and (ii) that it has disclosed all results of any report, investigations, survey, or environmental assessment regarding the environmental condition of the Easement Area known to Grantor and in Grantor's possession. As used in this Easement, "Grantor's knowledge," "best of its knowledge," "known to Grantor", "of which Grantor is aware" and similar phrases mean the actual, conscious knowledge of the individual(s) executing this Easement on behalf of Grantor at the time of such execution (provided that (i) each such person shall be acting solely in their capacities so stated on behalf of Grantor, and not in their individual capacities, and (ii) no such person(s) shall be individually or personally liable to Holder or any other person(s) in any way), and not any imputed knowledge or any constructive or inquiry knowledge or notice and without any obligation to make any investigation or review any records. Neither Grantor nor Holder makes any representations or warranties, express or implied, concerning the accuracy, completeness, utility, reliability or correctness of such reports, investigations or assessments, or any information contained therein. Grantor warrants that, except as disclosed to Holder by Grantor, Grantor has not installed any, and to Grantor's knowledge, there are no, underground storage tanks, as defined in Oregon law, presently on or under the Easement Area. It is understood and agreed that, as between Holder and Grantor, the Grantor, its successors, and assigns retain financial responsibility for complying with existing and future regulatory actions concerning environmental conditions of the subject property, including the United States Army Corps of Engineers,

Oregon Department of Environmental Quality and United States Environmental Protection Agency orders and consent agreements with respect to conditions to the extent caused or made worse by Grantor. This provision shall not apply to a release of hazardous substances onto or from the property, or any failure to comply with any existing and future regulatory actions concerning environmental conditions of the subject property, or any exacerbation of any existing condition caused by the officers, agents or employees of Holder or the public or persons entering or using the Easement Area through or under Holder. It is understood and agreed that Holder, by accepting this Easement, is not, on account of such acceptance, accepting any liability for any pre-existing release of hazardous substances onto or from the subject Easement Area except to the extent Holder is liable or responsible therefor under applicable law in the absence of this Easement, and that the Grantor is not attempting to convey any such liability. As used in this paragraph, "release" and "hazardous substances" have the meaning given those terms in ORS 465.200(22) and 465.200(16) (2017 versions), respectively.

- 7. <u>Effective Date.</u> The rights of the public under this agreement shall become effective on the date this Easement is fully executed.
- 8. <u>Duration.</u> This Easement shall remain in effect perpetually. However, it shall terminate automatically in the event that the City Council, by ordinance, declares that the easement no longer is needed for public use, in which case Holder shall execute a recordable document evidencing such termination.
- 9. <u>Encumbrances.</u> This Easement is granted subject to all prior easements and/or encumbrances of record and matters that a complete inspection and accurate survey would reveal.
- 10. <u>Choice of law; Forum.</u> This Easement shall be governed by and construed in accordance with the laws of the State of Oregon, excluding its choice of law principles. Any litigation arising under this Easement shall occur in the court sitting in Multnomah County having proper jurisdiction.
- 11. Taxes. Grantor shall pay, when due, all real property taxes, assessments, and other charges against the Property, including (except to the extent such taxes are imposed due to use of the Easement Area by Holder or its permittees or invitees and would not otherwise be assessed against the Property) the Easement Area. There shall be no right to contribution from Holder for such items (except to the extent such taxes are imposed due to use of the Easement Area by Holder or its permittees or invitees and would not otherwise be assessed against the Property); provided that Holder, at Grantor's request, will reasonably cooperate with Grantor in Grantor's seeking any reduction or return of taxes for which Grantor may be otherwise responsible (or have paid) in relation to the use of the Easement Area by the public and/or the grant of the Easement Area for public purposes as provided herein.
- 12. <u>Notice and Addresses.</u> Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, to the

address set forth below. Any party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To Grantor:

**Prologis** 

4380 SW Macadam Avenue

Suite 285

Portland, OR 97239 Attn: Kris Edwards

To Holder:

Portland Parks & Recreation 1120 SW 5<sup>th</sup> Ave., #1302 Portland, OR 97204 Attn: Property Manager

With a copy to:

Office of the City Attorney

1221 SW 4<sup>th</sup> Ave. Portland, OR 97204 Attn: Linda Law

- 13. <u>Title Warranty.</u> Grantor represents and warrants that Grantor owns the entire fee simple interest in the Easement Area, and has the full power and lawful authority to grant this Easement, subject to Section 9, above.
- Covenants Running With the Land. The parties acknowledge and agree that the grant conferred by this Easement is intended to, and does, constitute an encumbrance that runs with the Property and inures to the benefit of and is binding upon the parties and their respective grantees, heirs, successors, and assigns; provided that such grant is and shall remain to the public for public trail use as provided herein only. Without limiting the forgoing, Grantor acknowledges that Holder's rights under this Easement are assignable. However, any assignment of Holder's rights, title and interest and the delegation of its obligations pursuant to this Easement can only be done by the written agreement of both Holder and Grantor. Upon any such assignment, Holder shall be forever released and discharged from any and all claims, demands, and damages which Grantor may have, make, or suffer as a result of anything done or occurring after the date of such assignment. Nothing contained in this Section, however, shall in any way be construed as releasing Holder's successors and assigns from any obligations to Grantor created by this Easement.
- 15. <u>Further Cooperation.</u> Each of the parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed intent and purpose of this Easement.
- 16. <u>Liability and Indemnity.</u> Without expanding or limiting either party's immunity or limitation on liability under other provisions of applicable law, the parties to this Easement acknowledge that, to the extent so provided in ORS 105.672 to ORS 105.696, each of Grantor and Holder is immune from liability for injuries incurred on the Property

by members of the public who access the Easement Area under authority of this Easement. Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantor agrees to indemnify, defend, and hold harmless Holder from any loss or litigation expense to the extent resulting from the acts or omissions of Grantor, its employees, agents or assigns that are in violation of this Easement, except to the extent caused by the negligent or wrongful acts of Holder or persons acting through or under Holder, including the public. As used in this Section, the word "losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a litigation expense. As used in this Section, the term "litigation expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.

- 17 Construction, Repair, Maintenance. Grantor shall be responsible for obtaining all governmental permits for Grantor's construction of the Trail prior to Grantor commencing such construction, and Holder shall cooperate in good faith with Grantor in obtaining any necessary construction and/or development permits. Grantor shall give Holder thirty (30) days written notice before commencing construction of the Trail. The Parties anticipate that the Trail will be constructed to PP&R's standards, though Grantor will assume liability and operational and maintenance responsibilities for the Trail initially. Assuming the Trail is installed as provided by this agreement, and maintained to Holder's satisfaction, the Parties anticipate that they will amend this agreement in the future and Holder will then be solely responsible for all repair and maintenance of the Trail and Easement Area, after the Trail is inspected and accepted by Holder, in writing. Grantor may take all reasonable actions within the Easement Area necessary to establish and construct the portion of the public trail contemplated herein within the Easement Area, including, but not limited to, installing the following related surface and subsurface improvements in the Easement Area (collectively, the "Trail"):
  - a. asphalt trail surfaces meeting all parks trail standards including a minimum of 12' width with minimum 1' gravel shoulders;
  - b. trail markers, signs, lights, and other security enhancements in the Easement Area conforming to Parks standards;
  - c. barriers, fences, bollards and gates necessary to prevent unauthorized, motorized access into the Easement Area;
  - d. landscaping;
  - e. benches;
  - f. gabion walls;
  - g. concrete curbs;
  - h. shallow-rooted trees, shall be planted 10 feet away from any proposed trail section, except when necessary to conform to permitting requirements, and in those circumstances, Grantor may locate those trees within 5 feet of the gravel shoulder edge, and Grantor shall use root barriers;
  - i. trail cross slopes, which shall generally be a maximum of 2% and 5% maximum

- longitudinal slope, whenever possible;
- j. the asphalt/concrete paving section, maintained at the section depth of 3" asphalt/concrete paving / 6" gravel subbase to meet typical park trail construction standards; and,
- k. metal railings and pultruded fiberglass decking on all bridges.

Holder's staff shall participate in key construction milestones and provide review and comment for those elements that Holder will maintain pursuant to this agreement. Those elements include but are not limited to: trail and bridge submittals; including trail, section depths and widths; neatly hand-tamped trail edge finishing; compaction test results on trail subgrade prior to paving. Holder's staff shall be given seven (7) days advance notice, and opportunity to be present on-site during asphalt paving and during bridge construction. Holder's staff shall participate in a final construction punch list walkthrough for all bridge and trail work improvements. Upon request, Grantor shall confirm or verify any information related to the construction of the improvements. Prior to the commencement of construction, Grantor shall provide Holder with a schedule of key milestones for the bridge construction to facilitate Holder's ability to monitor that work.

- 18. Enforcement. In addition to any other remedies available at law or in equity, Holder may compel Grantor to make the Easement Area available for the purposes set forth above in Section 2. Either party may enforce this Easement by exercising any one or more of the following remedies: a) seek injunctive relief to specifically enforce the terms of this Easement, to restrain present or future violations of this Easement, or to compel restoration of the Trail or any Trail improvements or any Facilities destroyed or altered as a result of the other party's violation of this Easement; and, b) may enter the Easement Area to remove any barrier obstructing such party's ability to access the Easement Area or the Trail to the extent such access is permitted in this Easement, and may take other self-help measures or actions reasonably necessary to protect and preserve the rights of such party under this Easement.
- 19. <u>Trail Development on the MCDD Levee.</u> Any trail development on a levee or within any existing Multnomah County Drainage District ("MCDD") levee easement area shall meet the development criteria of the United States Army Corps of Engineers ("ACOE") as administered by the MCDD. Grantee's obligation is to coordinate, as necessary, with the MCDD to ensure compliance with MCDD's development criteria.
- 20. <u>Counterparts.</u> This Agreement may be executed in two or more counterparts with the same force and effect as if executed in one complete document.

NO MORE TEXT THIS PAGE - SIGNATURES NEXT PAGE(S)

year first written above.	ies have	caused this instrument to be executed the day and
GRANTOR:		OGIS, L.P., a Delaware limited partnership ologis, Inc., its general partner
		Name: Ken Sun
	Date:	Title: Vice President, Prologis, Inc.
STATE OF OREGON	)	
County of MULTNOMAH	)	
		ledged before me this 30th day of
mentions and the state of the s	JSUN	, VICE PRESIDENT OF PROLOGIS INC.
JANICE LOUISE BRETHOWER NOTARY PUBLIC-OREGON		Much L. Brechower
COMMISSION NO. 949436 MY COMMISSION EXPIRES APRIL 17, 2020		Motary Public for Oregon My Commission Expires:
ACCEPTED BY HOLDER:	THE O	CITY OF PORTLAND
	Date:	Adena Long, Director Portland Parks and Recreation  6 10 19
STATE OF OREGON	)	, .
County of Multnomah	)	
		ledged before me this 10th day of Portland Parks + lecreation Director
OFFICIAL STAMP	NED.	Brook El Jashner
BROOKE ELAINE GARD NOTARY PUBLIC-OREGOI COMMISSION NO. 98435 MY COMMISSION EXPIRES MARCH 06	1	Notary Public for Oregon My Commission Expires: 3-6-23
APPROVED AS TO LEGAL SUF	FICIEN	CY
By:		
City Attorney		

EXHIBIT:

 ${\sf Exhibit}\,A-The\;Public\;Trail\;Easement\;Description$ 

# Northwest Surveying, inc.

## BOUNDARY TOPOGRAPHIC CONSTRUCTION CADASTRAL Licensed in OR & WA

1815 NW 169<sup>TH</sup> PLACE, SUITE 2090 BEAVERTON, OR 97006

TELEPHONE: (503) 848-2127 FAX: (503) 848-2179

### **EXHIBIT A**

### **Public Trail Easement Description**

April 4, 2019 NWS Project No. 930 Page 1 of 2

A variable width tract of land being portions of Parcels I and II of that property conveyed to Prologis, L.P. by deed recorded March 5, 2019 as Document No. 2019-022052, Multnomah County Deed Records, said tract being located in the Geo. Hamilton Donation Land Claim and being also located in the northeast one-quarter of Section 24, Township 1 North, Range 2 East, Willamette Meridian, City of Portland, Multnomah County, Oregon, more particularly described as follows:

Commencing at the northeast corner of said Geo. Hamilton Donation Land Claim, said point being on the centerline of NE 158<sup>th</sup> Avenue; thence along the east line of said Donation Land Claim and the centerline of NE 158<sup>th</sup> Avenue, South 01°31'36" West a distance of 855.66 feet to their intersection with the easterly extension of the south line of said Parcel II; thence along said easterly extension, North 88°34'24" West a distance of 30.00 feet to the southeast corner of said Parcel II, said point being on the westerly right-of-way line of NE 158<sup>th</sup> Avenue, 30.00 feet westerly of the centerline thereof, when measured at right angles, and being also the Point of Beginning.

Thence along the south line of said Parcel II, North 88°34'24" West a distance of 189.99 feet to the southwest corner thereof, said point being on the east line of said Parcel I; thence along the east line of said Parcel I, South 01°25'36" West a distance of 5.51 feet to a point; thence departing the east line of said Parcel I, South 58°55'00" West a distance of 37.83 feet to a point of curvature; thence 80.26 feet through the arc of a tangent 81.50 foot radius circular curve to the right, said curve having a central angle of 56°25'31", a chord bearing of South 87°07'45" West and a chord length of 77.06 feet to a point of tangency; thence North 64°39'29" West a distance of 61.63 feet to a point of curvature; thence 19.24 feet through the arc of a tangent 43.50 foot radius circular curve to the left, said curve having a central angle of 25°20'31", a chord bearing of North 77°19'45" West and a chord length of 19.08 feet to a point of tangency; thence North 90°00'00" West a distance of 36.44 feet to a point of curvature; thence 22.07 feet through the arc of a tangent 56.50 foot radius circular curve to the right, said curve having a central angle of 22°23'02", a chord bearing of North 78°48'29" West and a chord length of 21.93 feet to a point of tangency; thence North 67°36'58" West a distance of 80.47 feet to a point; thence North 77°37'21" West a distance of 497.41 feet to a point; thence North 79°18'54" West a distance of 98.41 feet to a point; thence North 81°03'09" West a distance of 276.25 feet to a point; thence North 66°09'54" West a distance of 86.44 feet to a point; thence North 89°04'48" West a distance of 62.46 feet to a point; thence North 78°46'56" West a distance of 215.78 feet to a point on the west line of said Parcel I; thence along the west line of said Parcel I, North 01°16'21" East a distance of 25.38 feet to a point; thence departing the west line of said Parcel I, South 78°46'56" East a distance of 217.91 feet to a point; thence South 89°04'48" East a distance of 50.22 feet to a point; thence South 77°12'25" East a distance of 30.60 feet to a point; thence South 66°09'54" East a

distance of 72.07 feet to a point; thence South 81°03'09" East a distance of 205.83 feet to a point; thence South 77°12'25" East a distance of 66.59 feet to a point; thence South 79°28'07" East a distance of 35.18 feet to a point; thence North 12°47'35" East a distance of 4.41 feet to a point; thence South 79°18'54" East a distance of 64.78 feet to a point; thence South 77°37'21" East a distance of 499.96 feet to a point; thence South 67°36'58" East a distance of 82.66 feet to a point of curvature; thence 12.31 feet through the arc of a 31.50 foot radius tangent circular curve to the left, said curve having a central angle of 22°23'02", a chord bearing of South 78°48'29" East and a chord length of 12.23 feet to a point of tangency; thence South 90°00'00" East a distance of 36.44 feet to a point of curvature; thence 30.30 feet through the arc of a tangent 68.50 foot radius circular curve to the right, said curve having a central angle 25°20'31", a chord bearing of South 77°19'45" East and a chord length of 30.05 feet to a point of tangency; thence South 64°39'29" East a distance of 61.63 feet to a point of curvature; thence 55.64 feet through the arc of a tangent 56.50 foot radius circular curve to the left, said curve having a central angle of 56°25'31", a chord bearing of North 87°07'45" East and a chord length of 53.42 feet to a point of tangency; thence North 58°55'00" East a distance of 45.40 feet to a point of curvature; thence 48.95 feet through the arc of a tangent 68.50 foot radius circular curve to the right, said curve having a central angle of 40°56'31", a chord bearing of North 79°23'15" East and a chord length of 47.91 feet to a point of tangency; thence South 80°08'30" East a distance of 63.31 feet to a point; thence South 88°36'15" East a distance of 87.60 feet to a point on the westerly right-of-way line of NE 185<sup>th</sup> Avenue; thence along said westerly right-of-way line, South 01°31'36" West a distance of 20.40 feet to the Point of Beginning.

Said described tract of land contains 43,528 square feet, more or less.

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JUNE 30, 1997
SCOTT F. FIELD

RENEWS: 12/31/2019

### Exhibit B – The Public Trail Easement Depiction



