

## LICENSE

THIS LICENSE ("License") is made as of this \_\_\_ day of \_\_\_\_\_, 2011, between PROLOGIS LAND LLC, a Delaware limited liability company ("Licensor") and THE CITY OF ROCHELLE, an Illinois municipal corporation ("Licensee").

## RECITALS

A. Licensor is the owner of certain real property located in Ogle County, Illinois, legally described on Exhibit A attached hereto and incorporated herein by this reference ("Licensor Property").

B. Licensee has requested from Licensor a license for temporary construction access, permanent grading to the existing pond, extension of the existing Northern Detention Pond to the north and east of its current location, and permanent excavation and removal of material from the Northern Detention Pond, as improved, to be used in the construction of the City Rail Road (the "Purpose") over a portion of the Licensor Property and Licensor agrees to grant such license upon the terms and conditions contained herein.

## AGREEMENT

1. Grant of License. In consideration of Licensee paying to Licensor, in advance, the sum of \$10.00, Licensor hereby grants to Licensee a nonexclusive license to that portion of the Licensor Property described on Exhibit B attached hereto and incorporated herein ("License Area") for the Purpose.

2. Use by Licensor. Licensor reserves the right to use, or grant any other party the right to use, the License Area for any purpose whatsoever, provided the same does not materially interfere with or prohibit Licensee's use of the License Area for the Purpose.

3. Covenants of Licensee. Licensee covenants that (a) when all or any part of the License Area or any other property owned by Licensor shall be disturbed or altered in any way by Licensee (or Licensee's agents, contractors, direct and indirect employees, or others for whose acts any of them may be liable) in connection with the exercise of its rights hereunder, Licensee, at its sole expense, at the expiration of this License, shall promptly restore the License Area and other Licensor property to as good a condition or better as existed immediately prior to any disturbance or alteration; provided, however, that Licensee need not return any excavated material permanently removed in connection with the Purpose and that Licensee shall be permitted to return the License Area with the constructed improvements as depicted on **Exhibit C** attached hereto and incorporated herein, (b) it shall maintain the License Area and all improvements thereon (including, without limitation, lights, gravel, and fences) in a safe, neat, operational and clean condition and shall minimize any interference with Licensor's Property and operations thereon, (c) it shall at all times comply with applicable laws, rules, regulations, ordinances and rulings, and (d) it shall indemnify and hold harmless Licensor, its officers, directors, trustees, managers, shareholders, employees, agents, successors and assigns (collectively, "Indemnified Parties") from all losses, costs, damages, claims, liabilities or expenses (including reasonable attorney fees) directly or indirectly suffered or incurred by or asserted against any of the Indemnified Parties by reason of, on account of or in any way relating to Licensee's use and enjoyment of the License Area.

4. Dewatering of Detention Ponds. Licensee shall be permitted to dewater both the Northern Detention Pond and the Southern Detention Pond in connection with the Purpose.

5. Successors and Assigns. The rights and obligations of Licensor and Licensee hereunder will be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns. Provided, however, that the rights herein granted are personal to Licensee and may not be assigned, directly or indirectly, partially or wholly, to any other party.

6. Governing Law. This Easement shall be construed in accordance with the laws of the State of Illinois.

7. Severability. All terms and conditions of this License will be deemed severable. Should any one or more of the terms and conditions hereof be deemed void or unenforceable, then (a) the remaining provisions will have full force and effect, and (b) those provisions deemed void or unenforceable will be interpreted, to the extent possible, so as to render such provisions enforceable and in a way consistent with the original intent of the parties hereto.

8. Counterparts. This License may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

9. Term. This License shall terminate on the first to occur of: (a) Licensor terminating this License after Licensee breaches any of its covenants in Section 3 above and such breach remains uncured after 15 days written notice; (b) either party giving the other party 30 days advance written notice, which it may give in its reasonable discretion; (c) Licensee's written notice of completion of the Purpose; or (d) 1 year after the date of this Agreement. All permanent improvements made pursuant to the terms of this License shall survive the expiration of the License and thereafter be deemed a part of the real estate on which the improvements are located.

10. Default. If either party fails to perform as required hereunder and is given written notice of default, and if the defaulting party fails to correct the default within 15 days after such notice, or if in the case of a default involving potential danger to personal health or safety, the defaulting party fails to correct the default within 1 day after that notice, then the nondefaulting party, at its election and in its sole discretion, may cure the default for and on behalf of the nondefaulting party, and any amounts which the non-defaulting party may expend for that purpose or which otherwise may be due by the defaulting party to the nondefaulting party shall be due on demand together with interest thereon at a rate which is the greater of 15% per annum or the maximum rate permissible by law, from the date of expenditure to the date when full payment is made by the defaulting party.

11. Remedies. In the event of a breach or threatened breach of any term, covenant or condition of this License, the nonbreaching party shall have, in addition to all other legal and equitable remedies available, the right to enforce the provisions hereof by injunctive relief or otherwise, without the necessity of proof of actual damage or inadequacy of any legal remedy. If any legal action or other proceeding is brought to enforce this License, or because of an alleged dispute, breach, or default in connection with any of the provisions of this License, the successful or prevailing party will be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

12. Notices. Any notice required or desired to be given to either party hereunder shall be deemed given: (a) when delivered personally to that party, or (b) one (1) day after deposit with a nationally recognized overnight courier service, or (c) three (3) days after deposit in the United States mail, as certified mail, return receipt requested, postage prepaid. Notices delivered pursuant to subsections (b) or (c) hereof shall be delivered to the address provided by Licensor and Licensee, as applicable:

If to Licensee: City of Rochelle  
Attn: City Manager  
420 North 6<sup>th</sup> Street  
Rochelle, IL 61068

With a Copy to: City of Rochelle  
Attn: City Attorney  
420 North 6<sup>th</sup> Street  
Rochelle, IL 61068

If to Licensor: ProLogis Land LLC  
Attn: James Nass  
8755 West Higgins Rd.  
Suite 700  
Chicago, IL 60631

With a Copy to: Prologis  
Attn: Legal Department  
4545 Airport Way  
Denver, CO 80239

THIS LICENSE has been executed by the Licensor and the Licensee as of the date and year first set forth above.

**LICENSEE**

THE CITY OF ROCHELLE, an Illinois  
municipal corporation

By: \_\_\_\_\_  
DAVID S. PLYMAN  
City Manager

Attest: \_\_\_\_\_  
BRUCE MCKINNEY  
City Clerk

**LICENSOR**

PROLOGIS LAND, LLC, a Delaware  
limited liability company

By: Prologis, a Maryland real estate  
investment trust, its sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

Licensors Property Legal Description

LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT NUMBER ONE:

Part of the Northeast Quarter of Section 31, Township 40 North, Range 2 East of the 3rd Principal Meridian, in Ogle County, Illinois; described as follows:

Beginning at a point on the Easterly Right of Way of Caron Road, said point being 20.22 feet south of the Southerly Right of Way line of Interstate 88 as measured along said Easterly Right of Way line; thence North 78 degrees 43 minutes 43 seconds East, a distance of 901.25 feet; thence North 76 degrees 20 minutes 30 seconds East, a distance of 113.90 feet; thence South 13 degrees 39 minutes 30 seconds East, a distance of 63.42 feet to the Northwesterly Right of Way line of the City of Rochelle Railroad; thence South 42 degrees 28 minutes 28 seconds West along said Northwesterly Right of Way line, a distance of 458.83 feet to the East Line of Lot 1 of Logisticenter Unit One; thence South 00 degrees 30 minutes 38 seconds East along said East line, a distance of 95.67 feet; thence South 54 degrees 28 minutes 25 seconds West, a distance of 73.26 feet to the West line of Lot 1 of Logisticenter Unit One; thence South 00 degrees 30 minutes 37 seconds East, a distance of 768.12 feet; thence South 89 degrees 29 minutes 22 seconds West, a distance of 261.59 feet to a point on said Easterly Right of Way line; thence Northerly along said Easterly Right of Way line along an arc which has a chord bearing of North 18 degrees 36 minutes 07 seconds West, a chord length of 538.20 feet, a radius of 13128.15 feet, and an arc length of 538.23 feet; thence North 19 degrees 46 minutes 35 seconds West along said Easterly Right of Way line, a distance of 633.98 feet to the point of beginning.

LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT NUMBER TWO:

Parts of the Northeast Quarter of Section 31 and the Northwest Quarter of Section 32, all in Township 40 North, Range 2 East of the 3rd Principal Meridian, in Ogle County, Illinois; described as follows:

The 25 feet Southerly of and as measured perpendicularly to the Southerly Right of Way line of the City of Rochelle Railroad Right of Way of Prologis Park Rochelle - Unit One, said Southerly Right of Way beginning at the East line of Lot 1 of Logisticenter Unit One and having the following five courses; North 42 degrees 28 minutes 28 seconds East, a distance of 414.33 feet; thence along an arc which has a chord bearing of North 60 degrees 23 minutes 13 seconds East, a chord length of 381.38 feet, a radius of 620.00 feet, and an arc length of 387.66 feet; thence North 78 degrees 17 minutes 58 seconds East, a distance of 562.00 feet; thence North 88 degrees 00 minutes 12 seconds East, a distance of 440.00 feet; thence North 88 degrees 20 minutes 48 seconds East, a distance of 240.00 feet to the West line of Lot 1 of Prologis Park Rochelle Unit One.

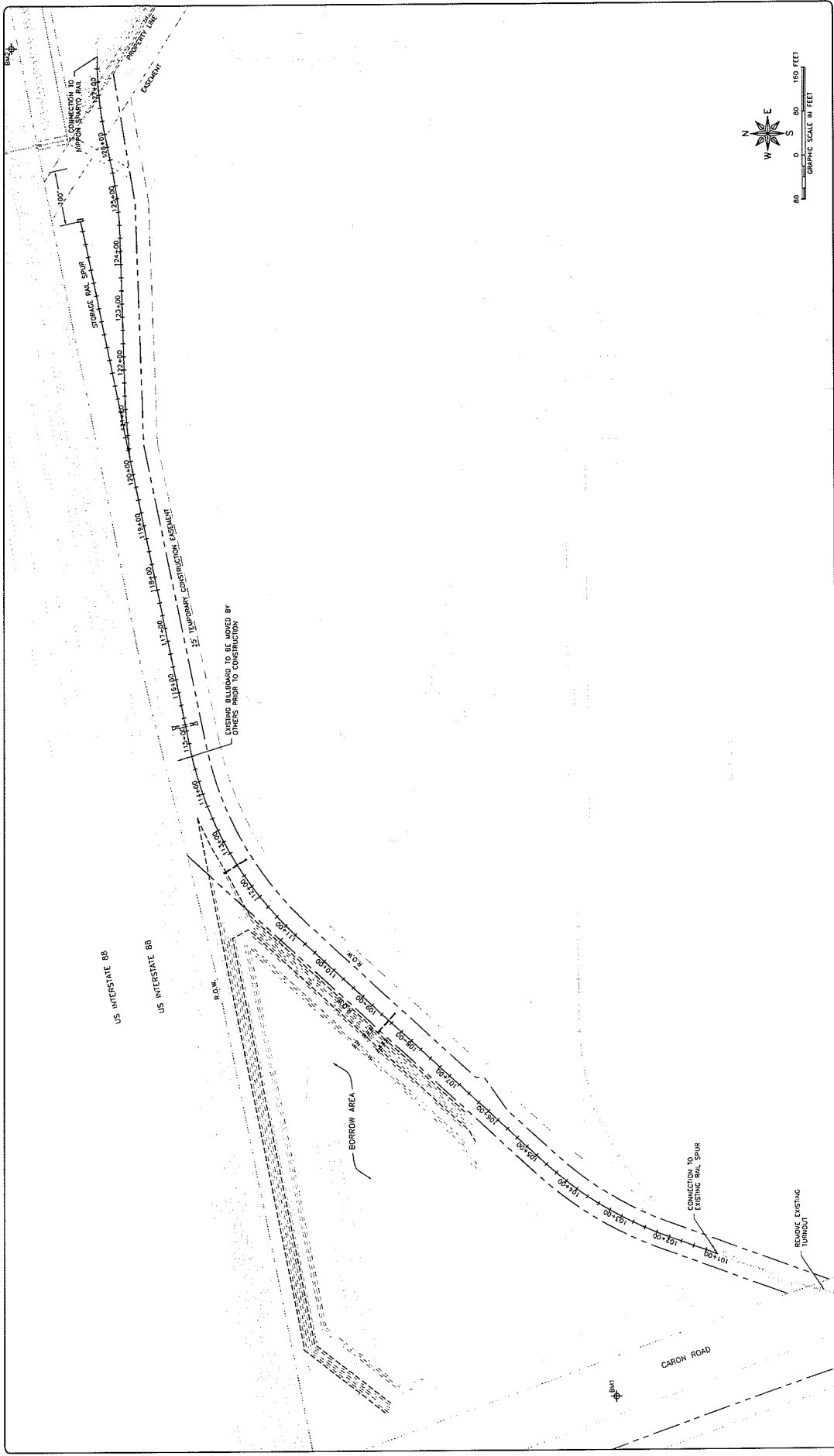
**EXHIBIT B**

License Area



**EXHIBIT C**

License Area Concept Plan



SHEET NUMBER:  
 11-213  
 SHEET NUMBER:  
 4 of 19

DRAWING:  
 SITE PLAN

REV. NO.	REVISIONS	DATE

DRAWN BY: CHS  
 APPROVED BY: N.C.  
 DATE: 05/20/11  
 SCALE: AS NOTED

PROJECT AND LOCATION:  
 CONTRACT NO. 101 PROLOGIS PARK  
 OFF-SITE RAIL IMPROVEMENTS  
 ROCHELLE, ILLINOIS

OWNER/DEVELOPER:  
 CITY OF ROCHELLE  
 ROCHELLE, ILLINOIS

**FEHR-GRAHAM & ASSOCIATES, LLC**  
 ENGINEERING AND SCIENCE CONSULTANTS  
 FREEPORT, IL, ROCKFORD, IL, SPRINGFIELD, IL, MONROE, WI  
 ILLINOIS REG. ENG. NO. 164-00252