

[FOR RECORDER'S USE]

**THIRD AMENDMENT TO ANNEXATION
AGREEMENT (DP Industrial) and AMENDMENT TO RIDER
TO ANNEXATION AGREEMENT (Illinois River Energy)
PROLOGIS PARK (f/k/a DP Industrial, LLC)**

Date: February 25, 2013

Parties: THE CITY OF ROCHELLE, an Illinois municipal corporation

and

PROLOGIS LAND LLC, a Delaware limited liability company

Property: approx. 77.208 acres south of Interstate 88 and north of Steward Road
known as Prologis Park Rochelle – Unit 4 subdivision

Legal Description: see attached **Exhibit A**

PIN(S): 25-32-200-015

Common Address: N/A

Prepared By and Return To:

ALAN H. COOPER

Law Offices of Alan H. Cooper

233 East Route 38, Suite 202

P. O. Box 194

Rochelle, IL 61068

(815) 562-2677

Attorney for City of Rochelle

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**THIRD AMENDMENT TO ANNEXATION AGREEMENT
(DP INDUSTRIAL) AND AMENDMENT TO RIDER TO
ANNEXATION AGREEMENT (ILLINOIS RIVER ENERGY)**

This THIRD AMENDMENT TO ANNEXATION AGREEMENT (DP INDUSTRIAL) and AMENDMENT TO RIDER TO ANNEXATION AGREEMENT (ILLINOIS RIVER ENERGY)(collectively “Amendment”) entered into as of the ___ day of _____, 2013, between the CITY OF ROCHELLE, an Illinois municipal corporation (“City”) and PROLOGIS LAND, LLC, a Delaware limited liability company (“ProLogis”):

WITNESSETH

THAT WHEREAS, the City is a non-home rule municipal corporation organized under the laws of the State of Illinois, and has the power to enter into and amend annexation agreements, pursuant to the applicable provisions of the Illinois Municipal Code, including without limitation 65 ILCS 5/11-15.1-1 *et. seq.*; and

WHEREAS, the City and DP Industrial, LLC, previously entered into an Annexation Agreement on July 29, 2003, relating to certain property including a part of the Subject Property, as hereinafter defined, which was recorded as Document No. 0313721 in the Office of the Ogle County Recorder on July 31, 2003 (“Annexation Agreement”); and

WHEREAS, the Annexation Agreement was subsequently amended on April 11, 2011, which was recorded as Document No. 201101102465, in the Office of the Ogle County Recorder, and was subsequently amended a second time on July 11, 2011, pursuant to Ordinance 11-4065, but which second amendment was not recorded because it became moot; and

WHEREAS, the City and Illinois River Energy, LLC, previously entered into an Annexation Agreement on July 29, 2003, relating to certain property including a part of the

Subject Property, as hereinafter defined, which was recorded as Document No. 0313728 in the Office of the Ogle County Recorder on July 31, 2003 (“IRE Annexation Agreement”);

WHEREAS, the IRE Annexation Agreement contained a Rider (“Rider to IRE Annexation Agreement”) governing the rights and obligations of DP Industrial, LLC, in the event of a real estate exchange between DP Industrial and Illinois River Energy involving property referred to in the Rider to IRE Annexation Agreement as the “Subject Property” which includes a part of the Subject Property, as hereinafter defined; and

WHEREAS, the real estate described as “Subject Property” in the Rider to IRE Annexation Agreement was subsequently exchanged between DP Industrial and Illinois River Energy; and

WHEREAS, the Subject Property, as hereinafter defined, was subsequently annexed into the City and zoned I-2 General Industrial; and

WHEREAS, ProLogis is the successor in interest to DP Industrial, LLC, under both the Annexation Agreement and the Rider to IRE Annexation Agreement; and

WHEREAS, ProLogis is the owner of all right, title and interest to the Subject Property, as described in **Exhibit A**, which property is partially subject to the Annexation Agreement and partially subject to the Rider to IRE Annexation Agreement; and

WHEREAS, the parties wish to amend both the Annexation Agreement and the Rider to IRE Annexation Agreement in certain particulars, as set forth in this Amendment; and

WHEREAS, on February 11 and 25, 2013, the Corporate Authorities of the City (consisting of the Mayor and City Council) held a public hearing on this Amendment, due notice of said public hearing having been given and published in the manner required by law on January

27, 2013, and said public hearing having been held in all respects in a manner conforming to law; and

WHEREAS, all other required public hearings in connection with the terms and conditions of this Amendment have been held in accordance with the ordinances of the City and the statutes of the State of Illinois; and

WHEREAS, the Corporate Authorities of the City have approved this Amendment by an affirmative vote of at least two-thirds of the Corporate Authorities then holding office, on February 25, 2013;

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Amendments. Notwithstanding anything in the Annexation Agreement or the Rider to IRE Annexation Agreement to the contrary, the following provisions shall be applicable to development of the Subject Property:

a. Acceptance of Caron Court. The City shall accept the street designated “Caron Court” and the public right-of-way, as shown on the Final Plat of ProLogis Park Rochelle – Unit Four, attached hereto as **Exhibit B**, and ProLogis shall post a two-year performance bond for Caron Court in the amount of \$20,000.00, in a form permitted by Section 86-56 of the Rochelle Municipal Code.

b. Acceptance of Street Lights. The City shall accept the existing street lights along Caron Court, upon inspection and approval by the Rochelle Municipal Utilities’ Superintendent of Transmission and Distribution. Any repairs required for acceptance of street lights will be completed by ProLogis prior to acceptance.

c. Offsite Sidewalk. The parties acknowledge that the property west of the Subject Property is currently owned by a third party. ProLogis will use commercially reasonable efforts

to obtain an easement in City's favor along the west side of Caron Court as depicted on **Exhibit B**, attached hereto, for a sidewalk; provided, however, that ProLogis shall not be obligated to incur any material cost or expense, in attempting to obtain said easement.

If for any reason, ProLogis is unable to obtain the easement contemplated herein, ProLogis will grant to City a comparable easement along the east side of Caron Court, around the cul-de-sac to the west property line of the Subject Property.

ProLogis will construct a 5-foot wide, concrete sidewalk, in accordance with the Rochelle Municipal Code and as approved by the City Engineer. This sidewalk will be constructed as part of the subdivision land improvements within 12 months of the recording of the final plat of Prologis Park Rochelle Unit 4 subdivision. Said sidewalk shall be constructed within the confines of the easement granted herein, as approved by the City Engineer, depending on the easement received.

d. Shared Use Path. ProLogis shall provide an easement along the north side of Steward Road and along the south property line of Lot 2 of ProLogis Park Rochelle - Unit 4, from the west property line of the Subject Property to a point approximately nineteen hundred feet (1900') east of the west property line, to the existing multi-use path easement . The width and alignment of the easement shall be approved by the City Engineer, prior to acceptance.

ProLogis shall make a contribution to the City of fifty percent (50%) of the estimated costs for engineering and constructing the shared use path, to be adjusted when actual costs are determined. The estimated costs for engineering and constructing the shared use path shall be calculated as of the date of contribution. The contribution shall be made no later than the earlier of: (1) five (5) years from the date of this Amendment, (2) the closing of any sale of any part of the property within Lot 2, ProLogis Park Rochelle – Unit Four, or (3) the issuance of a building

permit to ProLogis for any part of the property contained within Lot 2, ProLogis Park Rochelle – Unit Four.

The City shall construct the shared use path within the shared use path easement. Construction shall be completed no later than eighteen (18) months from the date of the initial contribution from ProLogis. At the conclusion of construction, the City shall prepare an invoice showing fifty percent (50%) of the actual construction and engineering costs of constructing the shared use path. If the invoice shows an amount higher than the initial contribution by ProLogis, ProLogis shall pay to the City the difference between 50% of the actual cost and the initial contribution. If the invoice shows an amount lower than the initial contribution by ProLogis, the City shall reimburse ProLogis the difference between the initial contribution and 50% of the actual cost.

e. Street Lights Along Steward Road. Street lights shall be installed along Steward Road, from Caron Court to a point near the intersection of Steward Road and Ritchie Road. The street lights will be along the south side of Steward Road, and along the west side of Steward Road south of the intersection of Steward Road and Ritchie Road.

ProLogis shall pay the City the total estimated costs for materials for not more than ten (10) street lights, to be adjusted when actual costs are determined. The estimated costs for materials shall be calculated as of the date of initial payment. The initial payment shall be made no later than the earlier of: (1) five (5) years from the date of this Amendment, (2) the closing of any sale of any part of the property within Lot 2, ProLogis Park Rochelle – Unit Four, or (3) the issuance of a building permit to ProLogis for any part of the property contained within Lot 2, ProLogis Park Rochelle – Unit Four.

The City shall install the street lights no later than eighteen (18) months from the date of the initial payment of ProLogis. At the conclusion of installation, the City shall prepare an invoice showing the actual costs of materials. If the invoice shows an amount higher than the initial payment by ProLogis, ProLogis shall pay to the City the difference between the actual cost of materials and the initial payment. If the invoice shows an amount lower than the initial payment by ProLogis, the City shall reimburse ProLogis the difference between the initial payment and the actual cost of materials.

f. Offsite Drainage Easement. ProLogis will use commercially reasonable efforts to obtain an easement in favor of the City along the west side of Caron Court, outside the Subject Property, to provide for offsite drainage; provided, however, that ProLogis shall not be obligated incur any material cost or expense, in attempting to obtain said easement. The size and location of the easement is depicted on **Exhibit B**, attached hereto.

If for any reason, ProLogis is unable to obtain the offsite drainage easement contemplated herein, ProLogis will grant to City a comparable easement along the east side of Caron Court and ProLogis will construct comparable stormwater drainage facilities along the east side of Caron Court that currently exist along the west side of Caron Court.

2. Annexation Agreement in Full Force and Effect. Except as expressly amended by this Amendment, the terms of the Annexation Agreement, as previously amended, and the terms of the Rider to IRE Annexation Agreement, as previously amended, remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Third Amendment to Annexation Agreement (DP Industrial) and Amendment to Rider to Annexation Agreement (Illinois River Energy) as of the date first above written.

CITY OF ROCHELLE, an Illinois municipal corporation (“City”)

PROLOGIS LAND LLC, a Delaware limited liability company

By: _____
David S. Plyman
City Manager

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

Attest: _____
Bruce McKinney
City Clerk

By: _____
Its: _____

CITY OF ROCHELLE

STATE OF ILLINOIS)
) ss.
COUNTY OF OGLE)

I, the undersigned notary public, do hereby certify that David S. Plyman and Bruce McKinney, the City Manager and City Clerk, respectively, of the City of Rochelle, an Illinois municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered said instrument in said capacity, pursuant to authority of the governing body of the City.

Given under my hand and official seal, this _____ day of _____, 2013.

(SEAL)

NOTARY PUBLIC

PROLOGIS LAND LLC

STATE OF _____)
) ss.
COUNTY OF _____)

I, the undersigned notary public, do hereby certify that _____ the _____ of ProLogis, a Maryland Real Estate Investment Trust, which is the sole member of ProLogis Land LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed and delivered said instrument in said capacity, pursuant to authority of the governing bodies and governing instruments of said real estate investment trust and said limited liability company.

Given under my hand and official seal, this _____ day of _____, 2013.

(SEAL)

NOTARY PUBLIC

EXHIBIT A
(Legal Description of Subject Property)

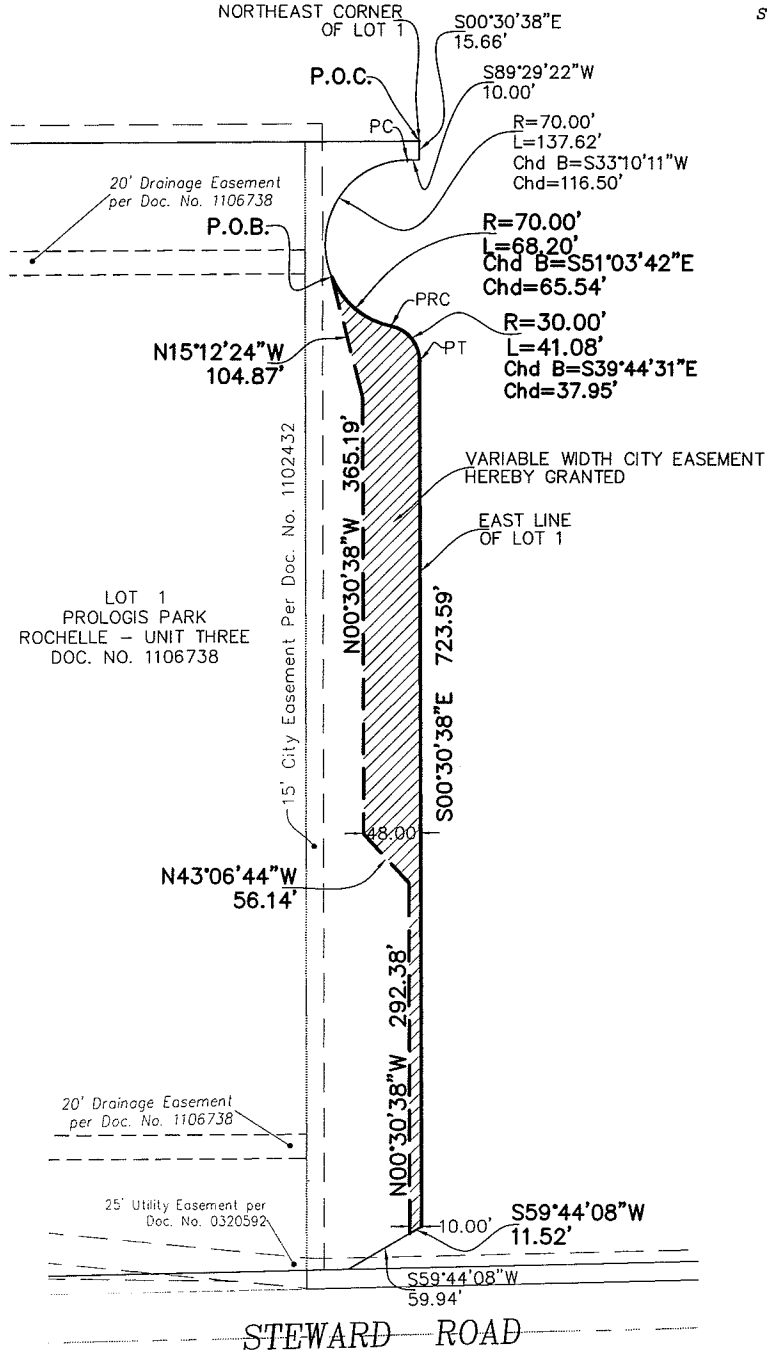
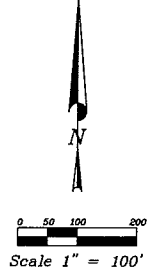
THAT PART OF THE NORTHEAST QUARTER OF SECTION 31, AND OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 2 IN PROLOGIS PARK ROCHELLE - UNIT ONE, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 8, 2011 AS DOCUMENT NUMBER 1102433, IN OGLE COUNTY, ILLINOIS, SAID SOUTHWEST CORNER ALSO BEING ON THE NORTH LINE OF RITCHIE ROAD (T.R. 389); THENCE THE FOLLOWING 3 COURSES ALONG SAID LINE: 1) SOUTH 87 DEGREES 04 MINUTES 42 SECONDS WEST, 235.96 FEET; 2) THENCE SOUTH 88 DEGREES 46 MINUTES 52 SECONDS WEST, 715.64 FEET; 3) THENCE SOUTH 89 DEGREES 04 MINUTES 38 SECONDS WEST, 384.79 FEET TO THE NORTH RIGHT OF WAY LINE OF STEWARD ROAD PER DOCUMENT 200800808101; THENCE THE FOLLOWING 3 COURSES ALONG SAID RIGHT OF WAY LINE: 1) NORTH 88 DEGREES 49 MINUTES 46 SECONDS WEST, 100.90 FEET; 2) THENCE SOUTH 88 DEGREES 19 MINUTES 41 SECONDS WEST, 718.18 FEET; 3) THENCE SOUTH 88 DEGREES 35 MINUTES 29 SECONDS WEST, 847.26 FEET TO THE LIMITS OF PROLOGIS PARK ROCHELLE - UNIT THREE, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 11, 2011 AS DOCUMENT NUMBER 1106738; THENCE THE FOLLOWING 8 COURSES ALONG SAID LIMITS: 1) NORTH 59 DEGREES 44 MINUTES 08 SECONDS EAST, 71.43 FEET; 2) THENCE NORTH 00 DEGREES 30 MINUTES 38 SECONDS WEST, 723.59 FEET TO A POINT OF CURVATURE; 3) THENCE NORTHWESTERLY ALONG A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 41.08 FEET TO A POINT OF REVERSE CURVATURE; 4) THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 70.00 FEET, AN ARC LENGTH OF 205.82 FEET TO A POINT OF TANGENCY; 5) THENCE NORTH 89 DEGREES 29 MINUTES 22 SECONDS EAST, 10.00 FEET; 6) THENCE NORTH 00 DEGREES 30 MINUTES 38 SECONDS WEST, 15.66 FEET; 7) THENCE SOUTH 89 DEGREES 29 MINUTES 22 SECONDS WEST, 1267.29 FEET; 8) THENCE NORTH 00 DEGREES 30 MINUTES 38 SECONDS WEST, 15.01 FEET TO THE LIMITS OF SAID PROLOGIS PARK ROCHELLE - UNIT ONE; THENCE THE FOLLOWING 6 COURSES ALONG SAID LIMITS: 1) NORTH 42 DEGREES 28 MINUTES 28 SECONDS EAST, 414.33 FEET TO A POINT CURVATURE; 2) THENCE NORTHEASTERLY ALONG A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 620.00 FEET, AN ARC LENGTH OF 387.66 FEET TO A POINT OF TANGENCY; 3) THENCE NORTH 78 DEGREES 17 MINUTES 58 SECONDS WEST, 562.00 FEET; 4) THENCE NORTH 88 DEGREES 00 MINUTES 12 SECONDS EAST, 440.00 FEET; 5) THENCE NORTH 80 DEGREES 20 MINUTES 48 SECONDS EAST, 240.00 FEET; 6) THENCE SOUTH 57 DEGREES 06 MINUTES 38 SECONDS EAST, 2831.13 FEET TO SAID POINT OF BEGINNING, IN OGLE COUNTY, ILLINOIS.

CONTAINING 3,363,200 SQ.FT. OR 77.208 ACRES MORE OR LESS.

EXHIBIT B
(Offsite Drainage and Sidewalk Easement)

EXHIBIT "B"



JACOB & HEFNER ASSOCIATES, INC.
 ENGINEERS SURVEYORS
 1910 S. Highland Avenue, Suite 100
 Lombard, IL 60148
 (630) 652-4600 FAX (630) 652-4601
 ILLINOIS PROFESSIONAL DESIGN FIRM
 LICENSE NO. 184-008073 EXP. 4/30/13

SURVEY NO.:	E129h
ORDER BY:	PROLOGIS
DESCRIPTION:	EXHIBIT
DATE PREPARED:	FEBRUARY 1, 2013
SCALE	1" = 100'
DRAWN BY:	ES

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