

Memorandum of Understanding – Pettengill Road

This Memorandum of Understanding (“MOU”) is entered as of the 25th day of August, 2014 (“Effective Date”), by and between the following parties:

James Winston, Trustee of the Peter J. King Irrevocable Trust of 1988 (“King Trust”), having an address of 9 Pepperidge Drive, Manchester, NH 03103, the owner of real property identified as Londonderry Tax Map 14, Lot 49. After the proposed sale to Prologis referenced below, King Trust shall retain ownership of Map 14, Lot 49-2 as shown on the proposed Subdivision Plan prepared by TF Moran, Inc. to be recorded in the Rockingham Registry of Deeds (“Subdivision Plan”);

Ballinger Properties, L.L.C., having an address of 20 Trafalgar Square, Nashua, NH 03063, and Five-N-Associates, having an address of 91 Amherst Street, Nashua, NH 03064 (collectively, “Ballinger”), the owners of real property identified as Londonderry Tax Map 14, Lots 45 and 45-2, 45-5, 45-6 and Map 28, Lots 17, 17-3, 17-4, 18-3, and 18-5, 18-7;

ProLogis Logistics Services Incorporated (“Prologis”), a Delaware corporation, having an address of 60 State Street, Suite 2200, Boston, Massachusetts 02109, the prospective purchaser of a portion of real property identified as Londonderry Tax Map 14, Lot 49 as shown on the Subdivision Plan;

City of Manchester, by and through its Department of Aviation (“MHT”), having an address of One City Hall Plaza, Manchester, NH 03103, the owners of real property identified as Londonderry Tax Map 14, Lots 45-1 and 49-1 and Map 28, Lots 17-2 and 18; and,

The Town of Londonderry, New Hampshire (“Town”), having an address of 268 B Mammoth Road, Londonderry, NH 03053, the proponent of Pettengill Road.

Whereas, the above-mentioned parties own land or have mutual interest in the development of land along so-called Pettengill Road in Londonderry, New Hampshire;

Whereas, the parties wish to memorialize their respective entitlements and obligations regarding the development of portions of Pettengill Road and adjacent areas within the Town of Londonderry, New Hampshire;

Whereas, the Town of Londonderry has pursued development of so-called Pettengill Road, a roadway improvement intended to become public, to serve as a catalyst for industrial development and job creation;

Whereas, the King Trust and Ballinger are the fee simple landowners of the real property under the pathway of proposed Pettengill Road;

Whereas, Prologis is a private development company proposing improvements upon a portion of Londonderry Tax Map 14, Lot 49 which will require the construction and dedication of a portion of Pettengill Road; and,

Whereas, certain other private and public utilities and improvements are necessary to develop the general area.

Now therefore, for consideration received, the sufficiency of which is hereby acknowledged, the above-mentioned parties each agree as follows:

1. For the purposes of this MOU, reference is made to an unrecorded graphic entitled "Schematic Easement Plan", prepared for Prologis by TFMoran dated June 13, 2014, a cost estimate worksheet for Prologis prepared by Continental Paving, Inc. dated May 29, 2014, and plans for Pettengill Road titled "Pettengill Road Re-Alignment Plot", prepared by Promised Land Survey, Inc. dated Feb. 9, 2010 (collectively, "the Improvements Exhibits"). as modified by Subdivision Plan, 52 Pettengill Road, Londonderry, New Hampshire, Tax Map 14 for lots 49 and 49-1 prepared by TFMoran, Inc. dated June 13, 2014 as last revised and recorded in Rockingham Registry of Deeds.
2. King Trust and MHT shall each "swap" and quitclaim their respective ownership interests in parcels "A" and "B" to the other, as the same is shown on the Schematic Easement Plan. MHT shall obtain approval for said "swap" from both the City of Manchester and the Federal Aviation Administration. Prologis, by and through its engineering and legal firms, shall support MHT's efforts with and otherwise make application to the Town to adjust lot boundaries such that parcel "A" becomes a part of Londonderry Tax Map 14, Lot 49, and parcel "B" becomes a part of Londonderry Tax Map 14, Lot 49-1. Prologis agrees to reimburse MHT for all of its reasonable costs and expenses related to said swap, including real estate appraisals.
3. Ballinger and King Trust shall each convey rights-of-way and utility easements ("ROW") to the Town to make provision for the construction, operation and maintenance of Pettengill Road, as the same is conceptually depicted on the Schematic Easement Plan. Said ROW shall be approximately 160' in width and shall vary at the intersections to accommodate an eventual four-lane roadway, as the same is depicted on the plan entitled "Pettengill Road Re-Alignment Plot" (referenced above). Said ROW shall include a 30' easement area on each side of and contiguous to the ROW for drainage, slopes and cuts, and all public and private utilities for use in common with other owners along the ROW. Ballinger and King Trust further agree that said ROW shall include such additional easement areas for drainage features relating to the ROW, including reasonable paths of access thereto as described on the Schematic Easement Plan as ID Nos. 1, 2, 12, 13 and 15. Ballinger and King Trust agree to grant only what is shown on the Improvements Exhibits for utilities and drainage.

4. Ballinger's conveyance of Easement No. 15, as described in Section 3 above, shall be conditioned upon the Town: (i) providing to Ballinger evidence of Granite Ridge Energy, LLC's written commitment to relocate its cooling water line to "new" Pettengill Road, as discussed in Section 12 below at no cost to Ballinger; and, (ii) discontinuing that portion of "old" Pettengill Road that bisects Ballinger's property, with conveyance of the fee interest in such discontinued road to Ballinger free and clear of all easements for the benefit of the Town or Granite Ridge Energy, LLC, its predecessors, successors or assigns.. If, prior to conveyance of Easement No. 15 to the Town, Prologis reasonably requires access to the land within the area defined as Easement No. 15 for the purposes of construction, operating and maintaining a utilities corridor to serve Tax Map 14, Lot 49, then, upon forty-eight (48) hour notice, Ballinger shall execute and deliver to Prologis a non-exclusive utility easement in the form attached hereto as Exhibit A.
5. King Trust, Ballinger and MHT shall each convey rights-of-way and utility easements to the Town to make provision for the construction of a spur, (by parties other than the Town), extending from Pettengill Road to a cul-de-sac terminus upon land of the Trust and MHT ("North Spur") as conceptually depicted on the Schematic Easement Plan. Said North Spur shall be 60 feet in width and shall permit the construction of drainage, slopes and cuts and utilities. Said easements are referenced on the Schematic Easement Plan as ID Nos. 5, 6, and 7. The North Spur may be constructed by either the King Trust, Ballinger or MHT, without the requirement that any of the other parties contribute to the construction of said North Spur; which shall be constructed to Town roadway standards and any party shall be entitled to request that Town accept the dedication of the Class V road as a public way. It is expressly agreed that the North Spur, prior to its construction to Town roadway standards, and in connection with the sewer line improvements discussed in Section 7, shall be cleared, grubbed and graded by Prologis to provide access of a similar quality to that which is available for use by MHT within the existing Pettengill Road.
6. King Trust and MHT shall each exchange reciprocal rights-of-way and utility easements to make provision for the future construction, operation and maintenance of a connection between the North Spur and Raymond Wieczorek Drive ("North Spur Extension"). Said North Spur Extension shall initially be located over the common boundary line between land of the King Trust and MHT on the location of the existing Class VI public way; however, said North Spur Extension shall be dedicated as a Class V public way in order to accommodate a two-lane roadway which is to be constructed to public standards. If constructed to Town public road standards and dedicated as a Class V road, the Town agrees to accept said Class V road as a public road. MHT and the King Trust reserve the right to relocate the North Spur Extension partially or totally onto their respective

property so long as the other party's access rights are not diminished or impeded. If the North Spur Extension is located so as to not include the existing Class VI Road the parties agree to petition the Town to discontinue or release the public servitude on said unused portion of the Class VI Road and to exchange common releases for any common law or residual rights of access over said unused portion of the Class VI Road. Said easements are referenced on the Schematic Easement Plan as ID Nos. 16 and 17. Either MHT or King Trust may construct a roadway as a Class V public road to public standards and all necessary or desired utilities within the North Spur Extension and either party shall be entitled to dedicate and request that Town accept the dedication of the Class V road as a public way. The parties other than the Town shall also enter into a mutually acceptable cost sharing or cost reimbursement agreement for such construction and any maintenance costs prior to acceptance of the Class V road by the Town based on a formula which allocates the costs based on the proportion of designed vehicle usage and traffic volumes related to the project improvements to be constructed on their respective parcels; said formula to be adjusted as improvements are constructed on the property of MHT and the King Trust. The non-constructing party shall be required to reimburse the constructing party for its share of the reimbursable costs only upon the issuance of a certificate of occupancy for said non-constructing party's project improvements. It is further understood that the obligations of MHT hereunder are subject to the final approval of the Manchester Board of Mayor and Alderman.

7. Prologis, after acquiring Map 14, Lot 49 from King Trust, and Ballinger shall each convey rights-of-way and utility easements to the Town to make provision for the construction, operation and maintenance of the so-called South Loop Road extending from Pettengill Road towards Londonderry Tax Map 14, Lot 45 ("South Road"). Said South Road right-of-way and utility easement shall be a minimum of sixty feet (60') in total width, with thirty-six feet (36') of pavement, and be constructed to Town standards to accommodate a two-lane industrial roadway, with the centerline of said roadway upon the boundary between Londonderry Tax Map 14, Lots 49, on the one hand, and Lots 17 (Map 28) and 45 (Map 14), on the other hand. Said easements deeds shall describe equal cost sharing amongst the parties other than the Town for the South Road, with Ballinger remaining solely responsible for the construction of utilities (with the exception of sewer) within the South Road. Cost sharing for the design and construction of South Road with a cul-de-sac terminus shall be the subject of side agreement between Prologis and Ballinger. Said South Road easements are referenced on the Schematic Easement Plan as ID Nos. 3 and 4 and are depicted on the Pettengill Road Re-Alignment Plot and Improvements Exhibits.
8. Ballinger, King Trust and MHT shall each convey easements to the Town to make provision for the construction, operation and maintenance of new "gravity" and "force"

main sewer lines, up to and including the “wet well” structure as shown on the plans entitled “Pettengill Road Re-Alignment Plot”. The Town shall be solely responsible for the cost of construction, operation and maintenance of said sewer lines and “wet well”, provided Prologis pays said construction expenses in the first instance and receives “dollar-for-dollar” reimbursement from the Town upon inspection and acceptance of the completed installation. In addition, the Town shall be responsible for the installation, expense and maintenance of the building, pumps, and accessory equipment necessary to make the “force” main sewer line operational. Said installation of the building, pumps, and accessory equipment shall occur in connection with development of the adjacent Ballinger property to the south, provided Ballinger has executed and delivered Easement No. 15 to the Town. See Section 4, above. Said sewer easements are shown on the Schematic Easement Plan as ID Nos. 8, 9, 10, and 11.

9. King Trust shall convey a non-exclusive common easement to each of the Town and Prologis allowing for overflow drainage relief onto King Trust’s remaining land identified as Londonderry Tax Map 14, Lot 49 as shown on the Schematic Easement Plan as ID No. 13 and as approved by the Town Planning Board and New Hampshire Department of Environmental Services, Alteration of Terrain Bureau and all improvements within the overflow drainage easement shall be at the sole cost and expense of Prologis.
10. Following the execution and delivery of Easement No. 15 by Ballinger to the Town, and completion of the contingencies in Paragraph 4, and provided that Granite Ridge Energy LLC has terminated its use of its prior easement, Ballinger shall fund construction of the two-lane stretch of new Pettengill Road, along with construction of a 4-way signalized intersection at the connection of Pettengill Road with North Spur and South Road and modification and signalization of the intersection with Industrial Drive. The Town shall be responsible for the cost of the design and inspection, but not the cost of construction of the two-lane stretch of new Pettengill Road, and the new signalized intersections. Said roadway connection is referenced on the Schematic Easement Plan as ID No. 15, and said intersections are, at the connection point between Easement Nos. 1, 3, 4, 5, 6 and 15, and Industrial Drive.
11. King Trust shall convey an easement to Prologis in the form contemplated by the Purchase and Sales Agreement between the parties dated May 9, 2014 to provide for joint access from Pettengill Road to Londonderry Tax Map 14, Lot 49. Said joint access connection is shown on the Schematic Easement Plan as ID No. 14.
12. King Trust shall declare, establish and record in the Registry of Deeds for the benefit of all present and future owners of Map 14, Lot 49-2 an internal access easement which

allows access to and from all future uses on Map 14, Lot 49-2, or any subdivided portion thereof, to the joint access connection described in Paragraph 10 above.

13. As described in Paragraph 4 above, the Town shall work with Granite Ridge Energy, LLC to arrange relocation of its active cooling water line along new Pettengill Road and to release its existing rights in "old" Pettengill Road, which shall not result in expense or obligations to any party to this MOU.
14. This MOU shall be deemed a contract and construed according to the laws of the State of New Hampshire. All amendments, modifications, changes, deletions or additions to this MOU must be in writing and shall be binding on and benefit the assigns and successors of the parties hereto. Any claim of action of any kind related to this MOU or its enforcement shall be filed in the Rockingham County Superior Court, which shall have exclusive jurisdiction and venue over any claim, action or dispute related to the MOU.
15. This MOU may be executed in counterparts, the sum of which shall represent a fully-executed agreement.

[SIGNATURE PAGES FOLLOW]

WHEREFORE, as of the Effective Date, the above-mentioned parties hereby execute this MOU.

Town of Londonderry, New Hampshire

By: _____

Duly Authorized

TM

Peter W. King Irrevocable Trust, of 1988

By: _____

James Winston, as Trustee and not individually

Ballinger Properties, L.L.C.

By: _____

Samuel A. Tamposi, Jr.,

Duly Authorized Manager

Five-N-Associates

By: _____

Peter Q. Nash

Duly Authorized General Partner

Prologis Logistics Services Incorporated

By: _____

Greydon Sargent

Duly Authorized Vice President

**City of Manchester, by and through its
Department of Aviation**

By: _____

Theodore L. Gatsas

Duly Authorized Mayor

WHEREFORE, as of the Effective Date, the above-mentioned parties hereby execute this MOU.

Town of Londonderry, New Hampshire

By: _____
Kevin H. Smith
Duly Authorized Town Manager

Peter J. King Irrevocable Trust of 1988

By: _____
James Winston, as Trustee and not individually

Ballinger Properties, L.L.C.

By: _____ 8/25/14
Samuel A. Tamposi, Jr.,
Duly Authorized Manager

Five-N-Associates

By: _____
Peter Q. Nash
Duly Authorized General Partner

Prologis Logistics Services Incorporated

By: _____
Greydon Sargent
Duly Authorized Vice President

**City of Manchester, by and through its
Department of Aviation**

By: _____
Theodore L. Gatsas
Duly Authorized Mayor