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CITY OF OAKLAND



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## LEGAL OPINION

May 21, 2013

Honorable City Council  
Oakland, California

**Re: Questions Regarding Army Base Developer/Property Manager's  
Oakland Business Tax Certificates (Item 15 on the City Council's May  
21, 2013 Council Meeting)**

Dear Council President Kernighan and Members of the City Council:

### I. Introduction

At its May 7, 2013 meeting, the Council asked the City Attorney to advise whether the Army Base developer had Oakland business tax certificates when selected by the City in relation to development at the Oakland Army Base, and if not, whether that fact invalidates the Army Base agreements.<sup>1</sup>

### II. Questions

1. Did Phil Tagami/California Capital Group, Inc. ("CCG"), have Oakland business tax certificates in 2010, when the City selected CCG to negotiate for the development of the Army Base, and 2011 and 2012?
2. Whether the Army Base Lease Disposition and Development Agreement ("LDDA") is invalid if the developer did not have a tax certificate at the time it executed the LDDA?

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<sup>1</sup> The public speaker discussion at the Council meeting loosely used the term "CCIG." Various entities represented by Mr. Tagami are involved in the Army Base agreements. The party that executed the Exclusive Negotiating Agreement for the Army Base was a joint venture consisting of AMB Property, LP and California Capital Group ("CCG"). The party that executed the LDDA was Prologis CCIG Oakland Global, LLC, a Delaware limited liability company ("Prologis/CCIG"). The party that executed an LDDA-related agreement to manage the Army Base, the Property Management Agreement ("PMA"), was California Capital Investment Group, Inc. ("CCIG").

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### III. Summary Conclusion

1. Yes, the City issued a business tax certificate to California Capital Group for the year 2010, when the City selected CCG to negotiate the Army Base development. California Capital Investment Group, Inc. ("CCIG"), the base property manager, had business tax certificates in 2011 and 2012.
2. No. Revenue Division records show that Prologis/CCIG Oakland Global LLC did not have a tax certificate when it executed the LDDA. However, even if the developer did not, lack of a tax certificate alone does not invalidate the LDDA.

### IV. Analysis

#### California Capital Group (CCG) Selected to Negotiate Army Base Development

The City selected AMB Property, LP and California Capital Group in 2010 to negotiate for the Army Base Development. According to City Revenue Division staff, CCG did have an Oakland business tax certificate for the year 2010. CCG has had a tax certificate since 1991.

#### Lease Disposition & Development Agreement With Prologis/CCIG Oakland Global, LLC (Prologis/CCIG) and Property Management Agreement With California Capital & Investment Group, Inc. (CCIG)

As is customary in the industry, after negotiations conclude a new developer entity is formed to carry out the project and sign the LDDA<sup>2</sup>. In 2012, the developer entity, named Prologis CCIG Oakland Global, LLC was formed as the party to execute the Army Base LDDA. On October 23, 2012, the City executed: (1) the Army Base LDDA with Prologis CCIG Oakland Global, LLC, a Delaware limited liability company ("Prologis/CCIG") to develop the Base; and (2) a Property Management Agreement (PMA) with California Capital & Investment Group, Inc. ("CCIG"), a California corporation, to act as property manager at the Base on the City's behalf.

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<sup>2</sup> Council Ordinance No. 13131 authorizes the City Administrator to execute without returning to Council a form of LDDA substantially similar to an exhibit to the Ordinance with Prologis/CCIG, and related entities or affiliates. Ordinances grant the City Administrator authority to act prospectively. Nothing in the law requires that the contracting entity be formed at the time of the ordinance adoption so long as the entity exists at the time of contract execution. Accordingly, the City Administrator could execute an LDDA with Prologis/CCIG if it were legally formed at the time the LDDA was executed. Prologis/CCIG submitted documentation of its good standing before it executed the LDDA.

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According to City Revenue Division staff, the Property Manager, CCIG, had a business tax certificate for 2011 and 2012. (An entity called CCIG Oakland Global LLC also had a business tax certificate for 2011 and 2012.)

The LDDA Developer party, Prologis/CCIG, did not register for a business tax certificate until May 13, 2013. Standard City and Redevelopment Agency LDDA or DDA agreements do not include a specific provision requiring a developer to have an Oakland business tax certificate. Instead, LDDAs customarily require a developer to meet its current liabilities and obligations, including federal and state taxes, as they accrue. The Army Base LDDA includes this developer representation and warranty. If Prologis/CCIG was obligated but failed to register for a business tax certificate when it executed the LDDA, it would have been in default of its obligations under the LDDA. In the event of default, the LDDA provides that the City must give Prologis/CCIG notice and thirty days to cure the default (LDDA Section 9.2). The City did not provide such notice to Prologis/CCIG.

The Oakland Municipal Code Section 5.04.100 requires a business to register with the City's business tax office within thirty (30) days of commencing its business activities. Failure to register on time subjects the delinquent business to penalties and interest. But, failure to register or pay business taxes required by this section does not of itself invalidate a business' agreements with the City or any other party.

No Oakland Municipal Code provision or other state or federal law would invalidate an otherwise validly executed agreement based on a business' failure to obtain a local business tax certificate.

Accordingly, failure by Prologis/CCIG to register for an Oakland business tax certificate would not, of itself, invalidate the LDDA. Further, Prologis/CCIG has provided evidence that it has now registered. Therefore, Prologis/CCIG has "cured" this potential default of the LDDA under Section 9.2 by registering.

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V. Conclusion

For the foregoing reasons, the LDDA and the PMA are not invalid under the Code provisions requiring a business to register for a business tax certificate.

Very Truly Yours,



BARBARA J. PARKER  
City Attorney

Attorney Assigned:  
Dianne Millner

cc: Mayor Jean Quan  
President Pat Kernighan  
Members of the City Council  
Deanna Santana, City Administrator  
Fred Blackwell, Assistant City Administrator  
Scott Johnson, Assistant City Administrator