

2019 JUL 25 PM 4:00


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. 87797 C.M.S.

A RESOLUTION APPROVING AN ALLOCATION OF UP TO \$20 MILLION OF NEW MARKETS TAX CREDITS BY OAKLAND RENAISSANCE NMTC, INC., TO ORNMTC 2, LLC, AND ORNMTC 4, LLC, SUB-COMMUNITY DEVELOPMENT ENTITIES AFFILIATED WITH OAKLAND RENAISSANCE NMTC, INC., AND TO ALLOCATE SAID TAX CREDITS TO ORTON DEVELOPMENT, INC., AND THE OAKLAND MUSEUM OF CALIFORNIA, OR THEIR RESPECTIVE AFFILIATES, FOR THE REHABILITATION AND ADAPTIVE REUSE OF THE HISTORIC HENRY J. KAISER CONVENTION CENTER AND FOR ACCESSIBILITY UPGRADES AND GARDEN IMPROVEMENTS TO THE OAKLAND MUSEUM OF CALIFORNIA CAMPUS, AND AUTHORIZING THE CITY ADMINISTRATOR TO FACILITATE SAID ALLOCATION(S) WITHOUT RETURNING TO COUNCIL

WHEREAS, the New Markets Tax Credit program ("NMTC Program") was created by Congress in 2000 to provide tax credits to stimulate investment in low-income communities to facilitate economic and community development; and

WHEREAS, under the NMTC Program, taxpayers receive tax credits by making equity investments in qualified community development entities ("CDEs") whose primary mission is to serve or provide investment capital for low-income communities, and who maintain accountability to residents of low-income communities; and

WHEREAS, Oakland Renaissance NMTC, Inc., ("ORMNMTTC"), an affiliate of the City of Oakland, is a California nonprofit public benefit corporation established by the City in August of 2004, whose mission is to serve low-income communities and low-income persons in the City of Oakland; and

WHEREAS, pursuant to the authority granted in Resolution No. 86865 C.M.S. adopted July 18, 2017, the City Council initially authorized the allocation of the \$20 million 2016 NMTC award for two projects: \$14 million for People's Community Market at 3103 Myrtle Street and \$6 million towards a Commercial Loan Pool program to benefit commercial businesses located in low income communities in Oakland; and

WHEREAS, in 2018, People's Community Market declined ORMNMTTC's tax credit allocation, citing problems with unsupportable project cost increases related to compliance with the City's Local and Small Local Business Enterprise ("L/SLBE") Program and the Local

Employment Program ("LEP"). The proposed Commercial Loan Program was placed on hold when Main Street Launch Oakland, formerly Oakland Business Development Corporation, also declined ORNMTC's tax credit allocation, after determining that Main Street Launch would be unable to issue enough additional debt to accommodate this new program; and

WHEREAS, ORNMTC desires to make an allocation of up to \$20 million of New Market Tax Credits to ORNMTC 2, LLC, a sub-CDE established by ORNMTC, for the allocation of said tax credits to Orton Development, Inc. or its affiliates for the development of the historic Oakland Civic Auditorium, also known as the Henry J. Kaiser Convention Center located at 10 10th Street (the "Kaiser Center"); and

WHEREAS, ORNMTC desires to make an allocation of up to \$20 million of New Market Tax Credits to ORNMTC 4, LLC, a sub-CDE established by ORNMTC, for the allocation of said tax credits to the Oakland Museum of California or its affiliates for improvements to the Oakland Museum of California campus (the "Museum"); and

WHEREAS, ORNMTC selected the Kaiser Center for a funding allocation due to the Kaiser Center's development program proposing to renovate the Calvin Simmons Theatre (the "Theatre") and related spaces for reuse as a performing arts venue, the adaptive reuse of the arena and basement of the building as private, commercial rental spaces, all site work to improve building access, public spaces, parking, and landscaping, and based on the general Kaiser Center's conformance with the objectives of ORNMTC's NMTC application, Kaiser Center's readiness, public benefits and conformance to City planning documents; and

WHEREAS, ORNMTC selected the Museum for a funding allocation due to the Museum's development program proposing to construct two new accessible entries to the Museum building on its corner at 12th Street and on 10th Street near the stairway to the lower level, improving access within the Museum gardens in compliance with the Americans with Disabilities Act, upgrading the Museum café, replanting within the gardens to replace plantings and trees that are at the end of their lifespan, to create new landscape environments that are environmentally sustainable and offer new opportunities for education and interpretation, and based on the general Museum's conformance with the objectives of ORNMTC's NMTC application, the Museum's readiness, public benefits and conformance to City planning documents; now, therefore, be it

RESOLVED: That the City Council hereby approves the allocation of up to \$20 million of New Market Tax Credits by ORNMTC to ORNMTC 2, LLC, a sub-CDE affiliated with ORNMTC, to allocate said tax credits to Orton Development, Inc. or its affiliates for the development of the Kaiser Center; and be it

FURTHER RESOLVED: That the City Council hereby approves the allocation of up to \$20 million of New Market Tax Credits by ORNMTC to ORNMTC 4, LLC, a sub-CDE affiliated with ORNMTC, to allocate said tax credits to the Oakland Museum of California or its affiliates for the development of the Museum; and be it

FURTHER RESOLVED: That the City Council's approval of the allocations under this resolution shall also constitute the City Council's authorization of ORNMTC's allocation

of New Market Tax Credits to both ORNMTC 2, LLC and to ORNMTC 4, LLC, for the Kaiser Center and the Museum, respectively; provided, that, in the aggregate, the two allocations do not exceed \$20 million of New Market Tax Credits; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to take all necessary actions with respect to the allocation of New Market Tax Credits to the Kaiser Center and or the Museum consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA,

JUL - 9 2019

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN - *8 Ayes*

NOES -

ABSENT -

ABSTENTION -

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

Prologis, L.P.
c/o Prologis, Inc.
Pier 1, Bay 1
San Francisco, CA 94111
Attn: Christina Jackson

RE: Estoppel Certificate ("Certificate")

Date: July __, 2019

Per the request of Tenant (as defined below), the undersigned, on behalf of the City of Oakland, a municipal corporation ("Landlord") hereby certifies to Prologis, L.P. as a prospective transferee of Tenant's interest under the Lease (as defined below), as of the date hereof, as follows:

1. Landlord is the current Landlord under that certain Army Base Redevelopment Project Ground Lease for MH-1 Lease Area, dated December 6, 2016, by and between Landlord and CCIG Oakland Global, LLC, a California limited liability company ("Tenant"), as amended by that certain Army Base Redevelopment Project First Amendment Ground Lease for MH-1 Lease Area, dated April 30, 2018 by and between Landlord and Tenant (the "First Amendment") (collectively, the "Lease"). All capitalized terms not otherwise defined herein, shall have the meaning as set forth in the Lease.

2. The Lease is in full force and effect and has not been amended subsequent to the First Amendment.

3. To Landlord's knowledge, Tenant is not in default in the performance of the terms and provisions of the Lease, nor is there now any fact or condition which, with notice or lapse of time or both, will become such a default. Landlord is not in default under the Lease, nor is there now any fact or condition which, with notice or lapse of time or both, will become such a default.

4. All Base Rent under the Lease has been paid in full as of the date of this Certificate, and no amount of Base Rent now due and payable remains unpaid.

5. The Funded Public Improvements have been completed, which includes the Public Improvement designated and commonly known as "West Burma Road." West Burma Road has become available for use by the general public as a public road.

6. Tenant has not requested, or received, credit for any amount of the Pre-Paid Base Rent Credit pursuant to Section 2.2.3.2 of the Lease.

7. No Minimum Project Liquidated Damages are currently due and payable under the Lease.

8. Other than the fair share payment of \$62,911.40 to cover the implementation of the Truck Management Plan, due prior to issuance of the building permit for the primary structure on the Premises, noted in that certain Notice Regarding Establishment of the Fair Share Program per the Standard Conditions of Approval/Mitigation Monitoring and Report Program for the Army Base Gateway Redevelopment Project – MH-1 Lease Area, dated January 31,

2019, there are no other Fair Share Program payments due, or to become due, with regard to the Premises.

9. This Certificate shall inure to the benefit of the Tenant and shall be binding upon Landlord.

The undersigned has caused this Certificate to be executed as of the day and year first written above.

CITY:

**CITY OF OAKLAND,
a municipal corporation**

By: _____
Name: _____
Title: _____

Approved as to form and legality:

By: _____
Name: _____
Title: _____

cc:

CCIG Oakland Global, LLC
c/o California Capital & Investments, Inc.
The Rotunda Building
300 Frank Ogawa Plaza, Suite 340
Oakland, CA 94612
Attn: Mr. Phil Tagami