
City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. ~~13131~~ 13620 C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13131, THAT AMONG OTHER THINGS, AUTHORIZED THE LEASE OF PROPERTY AT OAKLAND ARMY BASE FOR BILLBOARDS UNDER THE OAKLAND ARMY BASE BILLBOARD FRANCHISE AND LEASE AGREEMENT DATED OCTOBER 23, 2012 ("MASTER AGREEMENT") BETWEEN THE CITY OF OAKLAND ("CITY") AND PROLOGIS CCIG OAKLAND GLOBAL, LLC ("MASTER TENANT"), TO: (1) AUTHORIZE THE SETTLEMENT OF A DISPUTE REGARDING THE METHODOLOGY FOR CALCULATING CERTAIN PERCENTAGE RENT BY SPLITTING THE DIFFERENCE BETWEEN THE CITY'S AND MASTER TENANT'S POSITIONS, COMMENCING AS OF OCTOBER 1, 2020 AND CONTINUING THROUGH THE END OF THE MASTER AGREEMENT TERM ("SETTLEMENT"); AND (2) APPROVE AND AUTHORIZE THE CITY ADMINISTRATOR TO EXECUTE A FIRST AMENDMENT TO THE MASTER AGREEMENT AND SUCH OTHER DOCUMENTS NECESSARY TO EFFECUATE THE SETTLEMENT

WHEREAS, the City and the Redevelopment Agency of the City of Oakland ("Redevelopment Agency") and Master Tenant entered into that certain Billboard Franchise and Lease Agreement, dated as of October 23, 2012, for a portion of the former Oakland Army Base defined therein as the "Premises" (the "Lease"); and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") became the successor-in-interest to the Redevelopment Agency and, subsequently, pursuant to ORSA Resolution No. 2013-020, approval of the Oakland Oversight Board, Department of Finance, and California State Lands Commission, on August 30, 2013 by quitclaim deed recorded as Document No. 2013-295093, ORSA transferred Parcel E to the City along with all of its rights and obligations relating to the former Oakland Army Base including the Lease and the Premises. leaving the City and the Master Tenant as the remaining parties to the Lease; and

WHEREAS, pursuant to Section 1.7 of the Lease, the Master Tenant and Foster Interstate Media, LLC ("Foster") entered into the Foster Sublease; and

WHEREAS, the Parties disagree on the methodology for calculating percentage rent due to the City under Section 5.2(a) of the Lease. The dispute has arisen due to varying language

and interpretations of said language between the Lease and the Foster Sublease (the "Percentage Rent Dispute"); and

WHEREAS, on May 14, 2019, the City approved a transfer of the Foster Sublease to Outfront Foster Interstate Oakland LLC ("Sublessee"), who agreed to the assignment with the express acknowledgment of this Percentage Rent Dispute; and

WHEREAS, the Parties have negotiated a resolution to the Percentage Rent Dispute that would essentially require the Sublessee to "split the difference" between the two methods and remit that amount to the City as its share of the percentage rent, as more specifically outlined in the form of an amendment to the Lease, attached as Exhibit A ("Lease Amendment"); and

WHEREAS, the Parties have also agreed to forever settle the Percentage Rent Dispute and enter into a settlement agreement in the form attached as Exhibit B ("Settlement Agreement"); and

WHEREAS, subject to approval by the Council of the Lease Amendment, Sublessee will enter into an amendment to the Foster Sublease with conforming changes; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby approves the settlement of a dispute regarding the methodology for calculating certain Percentage Rent under the Master Agreement between the City and Master Tenant by splitting the difference between the City's and Master Tenant's positions, commencing as of October 1, 2020 and continuing through the end of the term, as more specifically articulated in the Lease Amendment ("Settlement").

SECTION 2. The City Council hereby approves and authorizes the City Administrator or his or her designee to execute the Lease Amendment and Settlement Agreement, substantially in the forms attached, and execute such other documents and take such other actions necessary to effectuate the Settlement.

SECTION 3. The City Council independently reviewed and considered this environmental determination, and the Council finds and determines that this action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines §15301 (Existing Facilities), §15061(b)(3) (no significant effect on the environment), and §15183 (projects consistent with a community plan, general plan, or zoning).

SECTION 4. The Lease Amendment, Settlement Agreement and such other documents necessary to effectuate the Settlement shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

SECTION 5. This Ordinance shall become effective immediately on the final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after the final adoption.


SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional


SECTION 7. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

NOV 10 2020

PASSED BY THE FOLLOWING VOTE:

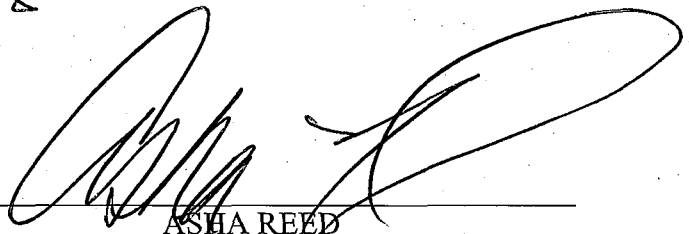
AYES – FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR,
THAO AND PRESIDENT KAPLAN 

NOES – 

ABSENT 

ABSTENTION 

ATTEST:


ASHA REED
Acting City Clerk and Clerk of the
Council of the City of Oakland,
California

Introduction Date

OCT 20 2020

Date of Attestation: November 17, 2020

NOTICE AND DIGEST

ORDINANCE AMENDING ORDINANCE NO. 13131, THAT AMONG OTHER THINGS, AUTHORIZED THE LEASE OF PROPERTY AT OAKLAND ARMY BASE FOR BILLBOARDS UNDER THE OAKLAND ARMY BASE BILLBOARD FRANCHISE AND LEASE AGREEMENT DATED OCTOBER 23, 2012 ("MASTER AGREEMENT") BETWEEN THE CITY OF OAKLAND ("CITY") AND PROLOGIS CCIG OAKLAND GLOBAL, LLC ("MASTER TENANT"), TO: (1) AUTHORIZE THE SETTLEMENT OF A DISPUTE REGARDING THE METHODOLOGY FOR CALCULATING CERTAIN PERCENTAGE RENT BY SPLITTING THE DIFFERENCE BETWEEN THE CITY'S AND MASTER TENANT'S POSITIONS, COMMENCING AS OF OCTOBER 1, 2020 AND CONTINUING THROUGH THE END OF THE MASTER AGREEMENT TERM ("SETTLEMENT"); AND (2) APPROVE AND AUTHORIZE THE CITY ADMINISTRATOR TO EXECUTE A FIRST AMENDMENT TO THE MASTER AGREEMENT AND SUCH OTHER DOCUMENTS NECESSARY TO EFFECUATE THE SETTLEMENT

This Ordinance authorizes approval of the settlement of a dispute regarding the methodology for calculating certain Percentage Rent under the Master Agreement between the City and Master Tenant by splitting the difference between the City's and Master Tenant's positions and the execution of a first amendment to the Master Agreement and such other documents necessary to effectuate the Settlement.

This Ordinance authorizes the City Administrator or her designee to sign the first amendment to the Master Agreement, and makes associated findings with respect to the California Environmental Quality Act and other matters.

FIRST AMENDMENT TO BILLBOARD FRANCHISE & LEASE AGREEMENT

This First Amendment to Billboard Franchise and Lease Agreement (this "First Amendment") is entered into on _____, 2020, by and between the City of Oakland, a California municipal corporation ("City"), on the one hand, and Prologis CCIG Oakland Global, LLC ("Tenant") on the other. City is also referred to herein as "Landlord". Landlord and Tenant are sometimes individually referred to herein as "Party", collectively as the "Parties".

RECITALS

- A. The Redevelopment Agency of the City of Oakland ("Redevelopment Agency") and Tenant entered into that certain Billboard Franchise and Lease Agreement, dated as of October 23, 2012, for a portion of the former Oakland Army Base defined therein as the "Premises" (the "Lease"). The Lease is incorporated herein by reference and all capitalized terms used but not defined herein shall have the meaning given to them in the Lease.
- B. The Oakland Redevelopment Successor Agency ("ORSA") became the successor-in-interest to the Redevelopment Agency and, subsequently, pursuant to ORSA Resolution No. 2013-020, approval of the Oakland Oversight Board, Department of Finance, and California State Lands Commission, on August 30, 2013 by quitclaim deed recorded as Document No. 2013-295093, ORSA transferred Parcel E to the City along with all of its rights and obligations relating to the former Oakland Army Base including the Lease and the Premises.
- C. Pursuant to Section 1.7 of the Lease, the Tenant and Foster Media entered into that certain Billboard Sublease Agreement, dated October 23, 2012 (the "Foster Sublease").
- D. The Parties disagree on the methodology for calculating Percentage Rent due to the City under Section 5.2(a) of the Lease. The dispute has arisen due to varying language and interpretations of said language between the Lease and the Foster Sublease (the "Percentage Rent Dispute").
- E. The Parties have negotiated a resolution to the Percentage Rent Dispute, and concurrently herewith, have entered into that certain OAB Billboard Settlement Agreement, attached hereto and incorporated herein as Exhibit C (the "Settlement Agreement").
- F. To effectuate the terms of the Settlement Agreement, the Parties are entering into this First Amendment that amends certain provisions of the Lease as further set forth below, and the Tenant and the successor-in-interest to the Foster Sublease, Outfront Media, are entering into an amendment to the Foster Sublease concurrently herewith.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as amend the Lease as follows:

1. Defined Terms. Any capitalized term used in this First Amendment but not defined in this First Amendment shall have the meaning given that term in the Lease.

2. Revisions to Existing Language. Where this First Amendment shows changes to the existing language of the Lease, new text is indicated in double underline and deleted text is indicated in ~~strikeout~~.

3. Percentage Rent. The Parties acknowledge and agree that the Percentage Rent Dispute exists because the Parties proposed two different methods for calculating the Percentage Rent payments due to the City pursuant to Section 5.2(a).

(a) The first method is arrived at by (i) subtracting the Minimum Annual Guarantee from the Net Advertising Revenue and then (ii) multiplying the resultant amount of (i) by 75% and then (iii) adding the resultant amount of (ii) or zero to the Minimum Annual Guarantee to arrive at the portion owed to the City pursuant to Section 5.2(a) ("Method 1").

(b) The second method is arrived at by (iv) multiplying the Net Advertising Revenue by 75%, and then (v) netting the resultant amount of (iv) against the Minimum Annual Guarantee, and then taking the (vi) greater of the resultant amount of (v) or zero and adding the resultant amount of (vi) to the Minimum Annual Guarantee to arrive at the portion owed to the City pursuant to Section 5.2(a) ("Method 2").

(c) To resolve the Percentage Rent Dispute, the Parties agree that the following language is added to Section 5.2 of the Lease as a new subparagraph (h):

(h) Notwithstanding anything to the contrary stated in this Agreement or the Foster Sublease, Tenant shall pay to Landlord each quarterly installment of the Percentage Rent required by Section 5.2(a) in an amount equal to the greater of the (i) the average of the resultant amounts calculated pursuant to Method 1 and Method 2 or (ii) zero, as more fully set forth below:

(1) METHOD 1: Calculate the Percentage Rent using the following steps:

<u>STEP 1:</u>	<u>Identify the Gross Advertising Revenue</u>
<u>STEP 2:</u>	<u>Identify the Net Advertising Revenue</u>
<u>STEP 3:</u>	<u>Identify the Minimum Annual Guarantee Payment</u>
<u>STEP 4:</u>	<u>Subtract the Minimum Annual Guarantee Payment from the Net Advertising Revenue</u>
<u>STEP 5:</u> <u>("MISS")</u>	<u>Calculate Tenant's portion of Percentage Rent as the greater of (a) Twenty-Five Percent (25%) of the amount calculated in STEP 4, or (b) zero</u>

<u>STEP 6:</u> <u>("M1S6")</u>	<u>Calculate the City's portion of Percentage Rent as the greater of (a) Seventy-Five Percent (75%) of the amount calculated in STEP 4, or (b) zero</u>
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- (2) METHOD 2: Calculate the Percentage Rent using the following steps:

<u>STEP 1:</u>	<u>Identify the Gross Advertising Revenue</u>
<u>STEP 2:</u>	<u>Identify the Net Advertising Revenue</u>
<u>STEP 3:</u>	<u>Identify the Minimum Annual Guarantee Payment</u>
<u>STEP 4:</u>	<u>Subtract the Minimum Annual Guarantee Payment from the Net Advertising Revenue</u>
<u>STEP 5:</u> <u>("M2S5")</u>	<u>Calculate Tenant's portion of Percentage Rent as the greater of (a) the lesser of (i) Twenty-Five Percent (25%) of Net Advertising Revenue, or (ii) the amount calculated in STEP 4; or (b) zero</u>
<u>STEP 6:</u> <u>("M2S6")</u>	<u>Calculate the City's portion of Percentage Rent as the greater of (a) Seventy-Five Percent (75%) of the Net Advertising Revenue less the Minimum Annual Guarantee Payment, or (b) zero</u>

- (3) FINAL CALCULATION (STEP 7):

- (i) Calculate Percentage Rent payable to Tenant: An amount equal to the resultant calculation from METHOD 1, Step 5 plus the resultant calculation from METHOD 2, Step 5 then dividing that number by 2 [stated formulaically: $(M1S5 + M2S5)/2$].
- (ii) Calculate Percentage Rent payable to the City: An amount equal to the resultant calculation from METHOD 1, Step 6 plus the resultant calculation from METHOD 2, Step 6 then dividing that number by 2 [stated formulaically: $(M1S6 + M2S6)/2$].

For clarity, a spreadsheet denoting the steps of calculation and setting forth examples of how Percentage Rent is to be calculated is attached hereto as Exhibit A and the formulae for such

calculations is attached hereto as Exhibit B. Step 7 in the attached spreadsheet represents only the Percentage Rent due under Section 5.2(a), and the full payment due to the City under Section 5.2 consists of the SUM of the: MAG, Percentage Rent as calculated above for purposes of Section 5.2(a), and all such other amounts due under Sections 5.2(b) and (c).

6. Effective Date. The Parties agree that the calculations set forth in Section 3(c) shall be implemented and made effective commencing October 1, 2020.

7. Effect of Amendment. In the event of a conflict between the terms of the Lease, Settlement Agreement and/or the terms of this First Amendment, the terms of this First Amendment shall govern. Except as specifically amended hereby, all terms and conditions of the Lease shall remain unmodified and in full force and effect.

8. Governing Law; Counterparts. This First Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of California. This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile (or PDF) signatures to this First Amendment shall count the same as originals.

[Signatures on next page]

Sublandlord and Subtenant have executed this First Amendment as of the date first set forth above and this First Amendment shall be effective when countersigned by the City.

LANDLORD:

TENANT:

CITY OF OAKLAND, a municipal
corporation

Prologis CCIG Oakland Global, LLC,
a Delaware limited liability company

By: _____

Its: _____

By: _____

Its: _____

Approved as to form and legality:

Office of the City Attorney

Date: _____

Exhibit A

[See Attached]

Exhibit B

[See Attached]

Exhibit C

[See Attached]

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Document is subject to Public Disclosure

This Settlement Agreement and General Release ("Agreement") is entered by and between the City of Oakland, a California municipal corporation ("City"), on the one hand, and Prologis CCIG Oakland Global, LLC ("Tenant") on the other. City is also referred to herein as "Landlord". Landlord and Tenant are sometimes individually referred to herein as "Party", collectively as the "Parties".

RECITALS

This Agreement is made with reference to the following facts:

- A. The Redevelopment Agency of the City of Oakland ("Redevelopment Agency") and Tenant entered into that certain Billboard Franchise and Lease Agreement, dated as of October 23, 2012, for a portion of the former Oakland Army Base defined therein as the "Premises" (the "Lease").
- B. On or about October 23, 2012, Tenant and Foster Interstate Media, Inc ("Foster"), entered into that certain Billboard Sublease Agreement (the "Sublease").
- C. On or about May 14, 2020, Foster assigned all of its rights and interest under the Sublease to Outfront Foster Interstate Oakland LLC, a Delaware limited liability company (the "Subtenant").
- D. The Lease and Sublease are incorporated herein by reference.
- E. The Oakland Redevelopment Successor Agency ("ORSA") became the successor-in-interest to the Redevelopment Agency and, subsequently, pursuant to ORSA Resolution No. 2013-020, approval of the Oakland Oversight Board, Department of Finance, and California State Lands Commission, on August 30, 2013 by quitclaim deed recorded as Document No. 2013-295093, ORSA transferred Parcel E to the City along with all of its rights and obligations relating to the former Oakland Army Base including the Lease and the Premises.
- F. The Parties disagree on the methodology for calculating Percentage Rent due to the City under the Lease and Sublease (the "Percentage Rent Dispute").
- G. The Parties desire to settle and compromise the Percentage Rent Dispute between the Parties on a mutually acceptable basis, and release any and all other claims, the specific terms and conditions of which settlement are embodied herein. This Agreement is not an admission of liability by either Party.
- H. Pursuant to Resolution ____, the City Council approved and authorized the City Administrator to execute this Agreement..

- I. To further effectuate this Agreement, the City Council, adopted Ordinance _____ (the "Ordinance"), which authorized the City Administrator to enter into a First Amendment to the Lease with Tenant (the "First Amendment to the Lease") and to consent to a First Amendment to the Billboard Sublease between the Tenant and Subtenant (the "Sublease Agreement").

NOW THEREFORE, in consideration of the covenants and promises herein set forth, the Parties hereto agree as follows:

TERMS

1. **Incorporation of Recitals.** The Recitals are incorporated as though fully set forth herein.
2. **Settlement Terms.** In consideration for the mutual covenants and promises herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:
 - a. Concurrently herewith, the Parties shall enter into that certain First Amendment to the Lease, in form attached hereto as Exhibit A;
 - b. Concurrently herewith, Tenants agrees to cause the execution of the First Amendment to the Billboard Sublease Agreement, in the form attached hereto as Exhibit B and City agrees to consent to such execution; and
 - c. Commencing as of the effective date of the First Amendment to the Lease, Tenant agrees to cause the Subtenant to collect, administer and remit to the City its portion of the Percentage Rent pursuant to the terms set forth in the First Amendment to the Billboard Sublease Agreement
3. **Attorney fees and costs.** Each Party shall be responsible for the payment of its own costs, attorneys' fees, and all other expenses incurred in connection with the Percentage Rent Dispute and any matter or thing relating to this Agreement and the Released Claims.
4. **Release of all claims.** In consideration of the covenants undertaken herein, Tenant shall be deemed to have fully, finally, and forever released the City of Oakland, and all of its departments, officers, employees, attorneys and agents and any other person acting by, through, or in concert with City (the "Released Parties"), from any and all claims, charges, grievances, complaints, allegations, and causes of action for compensation, damages, injunctive relief, declaratory relief, costs, attorneys' fees or any other form of relief of any nature whatsoever, whether the existence, nature or extent of the released claim is known or unknown, suspected or unsuspected, which Tenant has or might have, or which Tenant at any time heretofore had or might have had, claimed to have or may claim to have against the Released Parties arising in, or in connection with, or out of the Percentage Rent Dispute and any such claim arising in, or in connection with, or out of the claims described above(the "Released Claims").
5. **Waiver of California Civil Code Section 1542.** Tenant recognizes and acknowledges that factors which have induced it to enter into this Agreement may turn out to be incorrect or to be different from what he had previously anticipated, and Tenant hereby expressly assumes any

and all of the risks thereof and further expressly assumes the risks of waiving the rights provided by California Civil Code section 1542, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

6. **No admissions.** This Agreement affects claims and demands which are disputed, and by executing this Agreement, no Party admits or concedes any of the claims, defenses, or allegations which were raised or could be raised by any other Party or any third party. Neither this Agreement nor any part of this Agreement shall be construed to be an admission by any Party of any violation of law, nor shall this Agreement nor any part of it, nor any settlement negotiations or earlier drafts of this Agreement, be admissible in any proceeding as evidence of such an admission. This document may be introduced in a proceeding solely to enforce the terms of this Agreement and may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the Released Claims.

7. **Warranty of non-assignment.** The Parties warrant that they have not assigned any of the claims or portions of the claims that are the subject of this Agreement.

8. **Reserved**

9. **Indemnification & hold harmless.** Tenant expressly agrees to defend, indemnify and hold harmless the Released Parties, their agents, and insurers from any and all lawsuits, claims, liens, reimbursement or subrogation interests asserted (or which may be asserted in the future) arising from or related to this Percentage Rent Dispute, including but not limited to claims by any other third Party.

10. **No unwritten representations.** Each Party represents that in executing this agreement, the Party does not rely upon and has not relied upon any representation, promise, or statement not expressly contained herein.

11. **Complete agreement.** This Settlement Agreement and General Release, along with the First Amendment to the Lease and the First Amendment to the Billboard Sublease, represent the complete agreement between the Parties and supersedes any prior agreements or discussions between the Parties.

12. **Tax consequences and benefits.** The Released Parties make no representation as to the tax consequences of the settlement or this Agreement and make no representation as to Tenant's eligibility for public or private benefits.

13. **California law.** This Agreement is executed and delivered in the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with the laws of the State of California.

14. **Interpretation and construction.** Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or parties preparing this document or the documents referred to herein, on the understanding that the Parties participated equally in the negotiation and preparation of the Agreement and the documents referred to herein or have had equal opportunity to do so. This Agreement has been arrived at through negotiation and none of the Parties is to be deemed the Party which prepared this Agreement or caused any uncertainty to exist within the meaning of Civil Code section 1654. The headings used herein are for reference only and shall not affect the construction of the Agreement.

15. **Breach, waiver and amendment.** No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement. This Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

16. **Authority to execute.** Each Party hereto warrants to the other parties that he/she has the full power and authority to execute, deliver and perform under this Agreement and all documents referred to herein, and that any needed consent or approval from any other person has been obtained.

17. **Counterparts.** This Agreement may be executed by the Parties in any number of counterparts, all of which taken together shall be construed as one document. Any facsimile signature shall be valid and acceptable for all purposes as if it were an original.

18. **Effective date.** The effective date of this Agreement shall be the date the last signatory hereto signs the Agreement, but in no event earlier than the effective date of the Ordinance.

19. **Duty to act in good faith.** The Parties shall act in good faith and use their reasonable good faith efforts after the execution of this Agreement to ensure that their respective obligations hereunder are fully and punctually performed. The Parties shall promptly perform any further acts and execute and deliver any other documents or instruments that may be reasonably necessary to carry out the provisions of this Agreement.

20. **Binding on successors and assigns.** This Agreement and all documents referred to herein shall bind and inure to the benefit of each of the Parties hereto, their spouses, domestic partners, children, heirs, estates, administrators, representatives, executors, attorneys, successors and assigns.

21. **No third party beneficiaries.** Except as expressly provided herein, this Agreement is not for the benefit of any person not a party hereto or any person or entity not specifically identified as a beneficiary herein or specifically identified herein as a person or entity released hereby. The Agreement is not intended to constitute a third-party beneficiary contract.

22. **Agreement signed knowingly and voluntarily after opportunity to consult with counsel.** Tenant understands and agrees to this settlement agreement and to the terms and conditions contained herein and enters into this agreement knowingly and voluntarily. Tenant has been advised that he has the right to seek legal advice with respect to this Agreement, including the release, and has consulted with his legal counsel regarding this Agreement. The Parties have investigated the facts pertaining to this Agreement and all matters pertaining thereto as deemed necessary. The Parties have relied on their judgment, belief, knowledge, understanding and expertise after consultation with their counsel concerning the legal effect of the settlement and its terms.

23. **Savings clause.** If any term, condition, provision or part of this Agreement is determined to be invalid, void or unenforceable for any reason, the remainder of this Agreement will continue in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release:

LANDLORD:

CITY OF OAKLAND, a municipal corporation

By: _____
Its: _____

TENANT:

Prologis CCIG Oakland Global, LLC,
a Delaware limited liability company

By: _____
Its: _____

Approved as to form and legality:

Office of the City Attorney

Date: _____