

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Economic and International Development

**AGENDA DATE:** Consent: February 5, 2019

**CONTACT PERSON:** Elizabeth Triggs, (915) 212-1619  
[TriggsEK@elpasotexas.gov](mailto:TriggsEK@elpasotexas.gov)

**DISTRICT(S) AFFECTED:** 1

**SUBJECT:**

A resolution that the City Manager be authorized to sign an Estoppel Certificate, and any additional documents required by the lease dated January 2, 2008, by and between the City of El Paso and NWIC-3, LLC, as the assignee to the original lease agreement for a 0.0414 acre parcel situated within an existing 60-foot wide El Paso Natural Gas Company Easement, and at Tract 1P1, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas.

**BACKGROUND/DISCUSSION:**

On January 2, 2008, the City of El Paso, as lessor, entered into a lease with Franklin Self Storage, LLC for a parcel located within an existing 60-foot wide easement. On June 9, 2009, the lease was amended to allow Franklin Self Storage, LLC to place conduits and pipes for underground utilities to be brought through the leased property for electrical, telephone, and water service utilities. On October 3, 2017, the City authorized assignment of the lease to NWIC-3, LLC. The lessee is now requesting an estoppel certificate pursuant to the January 2, 2008 lease. The purpose of the estoppel certificate is to certify that certain facts are correct as they relate to the existing lease, there are no defaults, and that rent is paid to a certain date.

**PRIOR COUNCIL ACTION:**

See above.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD/COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

  
Per: Jessica Herrera, Director  
Economic & International Development

## RESOLUTION

**WHEREAS**, on January 2, 2008, the City of El Paso, as lessor, entered into a lease with Franklin Self Storage, LLC ("*Assignor*"), a Texas company for the following described property:

A 0.0414 acre parcel, more or less, located within an existing 60-foot wide El Paso Natural Gas Company Easement, and at Tract 1P1, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas (the "*Property*").

**WHEREAS**, on June 9, 2009, the lease was amended by a First Amendment to Lease Agreement to allow Assignor to place conduits and pipes for underground utilities to be brought through the Property for electrical, telephone, and water service utilities; and

**WHEREAS**, the lease was amended by a Second Amendment to Lease Agreement, on October 3, 2017, which added provisions to the Lease pertaining to encumbrances; and

**WHEREAS**, on October 3, 2017, the City of El Paso entered into a Lessor's Approval of Assignment wherein Assignor assigned to NWIC-3, LLC, and NWIC-3 LLC agreed to assume, Assignor's obligation under the Lease;

**WHEREAS**, NWIC, LLC is requesting that the City provide an estoppel certificate pursuant to the January 2, 2008 lease for the Property.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign an Estoppel Certificate, and any additional documents required by the lease dated January 2, 2008, between the City of El Paso and NWIC-3, LLC, as the assignee to the original lease agreement for a 0.0414 acre parcel situated within an existing 60-foot wide El Paso Natural Gas Company Easement, and at Tract 1P1, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Dee Margo  
Mayor

(Signatures continue on following page)

CITY CLERK DEPT  
2019 JAN 30 PM12:12

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

Roberta Brito  
Roberta Brito  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

J. Herrera  
Br. Jessica L. Herrera, Director  
Economic & International Development

### ESTOPPEL CERTIFICATE

THIS ESTOPPEL CERTIFICATE (this "*Agreement*"), dated \_\_\_\_\_, 2019, is made by and among C-III COMMERCIAL MORTGAGE LLC, a Delaware limited liability company, having the address at 712 Fifth Avenue, New York, New York 10019 (together with its successors and assigns, "*Lender*") the CITY OF EL PASO, a home rule municipal corporation ("*Lessor*"), and NWIC-3, LLC, a Delaware limited liability company ("*Lessee*").

### RECITALS

Pursuant to that certain Lease Agreement, dated January 2, 2008, between Lessor and Franklin Self Storage Limited Liability Company ("*Franklin*"), as amended by First Amendment to Lease Agreement, dated June 9, 2009, and by Second Amendment to Lease Agreement, dated October 3, 2017 (collectively, the "*Lease*"), Lessor leased to Franklin certain real property described on Exhibit A attached hereto (together with all rights of way, easements and appurtenances relating thereto, the "*Property*").

Pursuant to the terms of that certain Lessor's Approval of Assignment dated October 3, 2017, between Lessor, Franklin and Lessee, Franklin assigned and transferred to Lessee all of Franklin's right, title, interest and obligations in, to and under the Lease, and Lessee accepted and assumed the same.

Lender intends to extend a loan (the "*Loan*") to Lessee to be evidenced by that certain Promissory Note made by Lessee and payable to the order of Lender (the "*Note*"), and secured by, among other things, a deed of trust granted by Lessee in favor of Lender (the "*Deed of Trust*") encumbering Lessee's interest in the Property and in the Lease (the Note, the Deed of Trust and all other documents executed in connection therewith are collectively referred to herein as the "*Loan Documents*").

NOW, THEREFORE, to induce Lender to make the Loan to Lessee and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Lessor's Representations and Warranties. Lessor represents and warrants to Lender and Lessee the following:

Lease. A true, correct and complete copy of the Lease is attached hereto as Exhibit B, and the Lease has not been amended except as expressly set forth in Exhibit B. The Lease is in full force and effect and constitutes the entire agreement between Lessor and Lessee with respect to the Property and the Lease. The Lease constitutes the legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms.

Ownership. Lessor is the sole record owner of the fee interest in the Property, and holder of the landlord's interest in, to and under the Lease. Lessee is the sole record owner of its identified leasehold estate in the Property, and holder of the tenant's interest in, to and under the Lease.

Rent. The minimum rent payable under the Lease currently is \$1,462.68 per annum, and Lessee has submitted an advance payment of rent to Lessor in the amount of \$7,970.22 such that rent has been paid through the month of January, 2022.

Term. The current term of the Lease commenced on January 3, 2008, and expires on January 1, 2038. Lessee does not have any rights to renew or extend the Lease, except as provided in Section 2.1 of the Lease.

Defaults; Offsets. Neither Lessor nor, to the best knowledge of Lessor, Lessee is in default under the Lease. Lessor has no knowledge of the existence of any event which, with the giving of notice, the passage of time, or both, would constitute a default by Lessor or, to the best knowledge of Lessor, Lessee under the Lease. All monetary obligations due under the Lease to date have been fully and currently paid.

Reliance. Lessor agrees that this Agreement may be relied upon by Lender, its successors and assigns and any nationally recognized statistical rating agency rating any securities issued in connection with the Loan or any portion thereof. This Agreement shall inure to the benefit of Lender, its successors and assigns (including, without limitation, each and every owner and holder of the Loan and each person who may succeed to Lessee's interest under the Lease) and shall be binding on Lessor, its legal representatives, successors and assigns. Lessor and the persons executing this certificate on behalf of Lessor have the power and authority to execute this certificate.

Waiver. Lender may, without affecting the validity of this Agreement, extend the time for payment of the Loan or alter the terms and conditions of any agreement between Lessee and Lender, including, but not limited to, the Note and the Deed of Trust, without the consent of, or notice to, Lessor and without in any manner impairing or otherwise affecting Lender's rights under this Agreement.

Miscellaneous. This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State in which the Property is located (without giving effect to such state's principles of conflicts of law). This Agreement shall be binding upon and shall inure to the benefit of Lessor, Lender and Lessee and each of their respective successors and assigns. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same original. The rights of Lender hereunder are in addition to the rights of Lender granted in the Deed of Trust and/or the Lease and shall not be in derogation thereof. All agreements and covenants contained herein are severable, and if any one of them is held to be invalid, then this Agreement shall be interpreted as if such invalid provisions were not contained herein. To the extent terms in this Agreement conflict with the terms of the Lease, the terms of this Agreement shall control.

*[SIGNATURES BEGIN ON NEXT PAGE]*

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IN WITNESS WHEREOF, the parties hereto have caused this Estoppel Certificate to be duly executed and delivered as of the day and year first written above.

LESSOR

**CITY OF EL PASO**, a home rule municipal  
corporation

By: \_\_\_\_\_

Tomás González  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**



Roberta Brito  
Assistant City Attorney



Al. Jessica Herrera, Director  
Economic & International Development

LENDER

**C-III COMMERCIAL MORTGAGE LLC.**,  
a Delaware limited liability corporation

By: \_\_\_\_\_

Name:  
Title:

LESSEE

**NWIC-3, LLC**, a California limited liability company

By: \_\_\_\_\_

Name:  
Title: