

RESOLUTION NO. 29-2002

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF MESQUITE, TEXAS, AND PROLOGIS TRUST AND AUTHORIZING ITS EXECUTION BY THE MAYOR; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council has been presented a proposed agreement by and between the City of Mesquite, Texas, and ProLogis Trust and has established Reinvestment Zone No. Sixteen (16) in the City of Mesquite, Texas; and

WHEREAS, the City Council has determined to enter into a commercial/industrial tax abatement agreement with ProLogis Trust, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved and that the Mayor shall be authorized to execute it on behalf of the City of Mesquite.

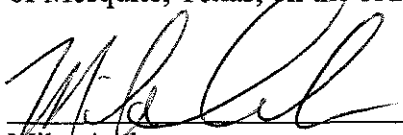
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the terms and conditions of the Agreement by and between the City of Mesquite, Texas, and ProLogis Trust (hereinafter called "Agreement"), having been reviewed by the City Council of the City of Mesquite and found to be acceptable and in the best interest of the City of Mesquite and its citizens, are hereby in all things approved.


SECTION 2. That the Mayor is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Mesquite substantially according to the terms and conditions set forth in the Agreement.

SECTION 3. That this resolution shall take effect immediately from and after its passage.

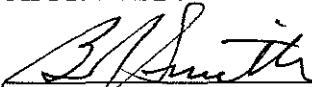
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 3rd day of June, 2002.

  
 \_\_\_\_\_  
 Mike Anderson  
 Mayor

ATTEST:

  
 \_\_\_\_\_  
 Ellen Williams  
 City Secretary

APPROVED:

  
 \_\_\_\_\_  
 B. J. Smith  
 City Attorney

APPROVED BY CITY COUNCIL  
DATE 6/3/02  
CITY SEC. Ellen Waller

THE STATE OF TEXAS     §  
  §  
COUNTY OF DALLAS     §

EXHIBIT "A"

**AGREEMENT**

This Agreement is entered into, by and between the CITY OF MESQUITE, TEXAS, a home rule city and Municipal Corporation of Dallas County, Texas, duly acting herein by and through its Mayor (hereinafter referred to as "CITY"); and ProLogis Trust, a Maryland Real Estate Investment Trust, duly acting by and through its Managing Director (hereinafter referred to as "OWNER").

**WITNESSETH:**

WHEREAS, on June 3, 2002, the City Council of the City of Mesquite, Texas, passed Ordinance No. 3505 establishing Reinvestment Zone No. Sixteen (16), City of Mesquite, Texas, for commercial/industrial tax abatement (hereinafter referred to as the "ORDINANCE") as authorized by Chapter 312, Texas Property Tax Code, as amended (hereinafter referred to as "STATUTE"); and

WHEREAS, on September 4, 2001, the City Council of the City of Mesquite, Texas, passed Resolution No. 46-2001 establishing criteria and guidelines governing tax abatement reinvestment zones and agreements (hereinafter referred to as the "CRITERIA"); and

WHEREAS, the CRITERIA constitute appropriate guidelines and criteria governing tax abatement agreements to be entered into by the CITY as contemplated by the STATUTE; and

WHEREAS, on April 4, 1988, the City Council of the City of Mesquite, Texas, passed Resolution No. 9-88 stating that it elects to be eligible to participate in tax abatement; and

WHEREAS, the CITY desires to participate in tax abatement to maintain and/or enhance the commercial/industrial economic and employment base of the Mesquite area to the long term interest and benefit of the CITY , in accordance with said ORDINANCE and STATUTE; and

WHEREAS, the contemplated use of the PREMISES, as hereinafter defined, the contemplated improvements to the PREMISES in the amount as set forth in this Agreement, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. Sixteen (16) in accordance with the purposes for its creation and are in compliance with the CRITERIA and the ORDINANCE and similar guidelines and criteria adopted by the CITY and all applicable law.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. The property to be the subject of this Agreement shall be that property described by map and metes and bounds attached hereto as Exhibits "A" and "B" and made a part hereof (hereinafter referred to as "PREMISES").

2. The OWNER shall commence construction of its 442,500 square feet concrete tilt-wall office and warehouse facility on approximately thirty (30) acres on the PREMISES (hereinafter referred to as "IMPROVEMENTS") with a total land, construction and fixed improvements of at least Fourteen Million Six Hundred Thousand Dollars (\$14,600,000.00) and substantially complete same on or about December 2003; provided that OWNER shall have such additional time to complete the IMPROVEMENTS as may be required in the event of a "force majeure" if OWNER is diligently and faithfully pursuing completion of the IMPROVEMENTS. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of OWNER including without limitation acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omission of OWNER), delays caused by franchise utilities, fire, explosions or floods, and strikes.

The date of completion of the IMPROVEMENTS shall be defined as the date a Certificate of Occupancy is issued by the CITY.

3. The OWNER agrees and covenants that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the IMPROVEMENTS as a good and valuable consideration of this Agreement. OWNER further covenants and agrees that all construction of the IMPROVEMENTS will be in accordance with all applicable State and local laws and regulations or valid waiver thereof. In further consideration, OWNER agrees that it shall thereafter, from the date a Certificate of Occupancy is issued until the expiration of this Agreement and any extension thereof, continuously operate and maintain the PREMISES as an industrial manufacturing, office and distribution facility.

4. The OWNER shall be required to certify annually to the CITY, beginning on the anniversary date of the execution of this Agreement until the expiration hereof, that the OWNER is in compliance with each applicable term of the Agreement. Such certification shall be made by ProLogis Trust, in writing and shall be delivered by personal delivery or certified mail to the Manager of Economic Development of the CITY at address 1515 N. Galloway, Mesquite, Texas 75149.

5. In the event that: (1) the IMPROVEMENTS for which an abatement has been granted are not completed in accordance with this Agreement; or (2) OWNER allows its ad valorem taxes owed the CITY to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes; or (3) OWNER breaches any of the terms or conditions of this Agreement, then this Agreement shall be in default. In the event that the OWNER defaults in its performance of (1), (2) or (3) above, then the CITY shall give the OWNER written notice of such default and if the OWNER has not cured such default within thirty (30) days of said written notice, or, if such default cannot be cured by

the payment of money and cannot with due diligence be cured within a ninety (90)-day period owing to causes beyond the control of the OWNER, this Agreement may be terminated by the CITY or the abatement extended by this Agreement may be reduced in percentage of taxes to be abated and/or period during which abatement is to be extended by revision of this Agreement as may be determined by the CITY to be a reasonable abatement based upon partial performance by the OWNER. Notice shall be in writing and shall be delivered by personal delivery or certified mail to ProLogis Trust, Attention: Steve Meyer, 2310 LBJ Freeway, Suite 200, Dallas, Texas 75234. In addition, a copy will be sent to ProLogis Trust, Attention: Legal Department, 14100 E. 35<sup>th</sup> Place, Aurora, Colorado 80011. As liquidated damages in the event of default, all taxes which otherwise would have been paid to the CITY without the benefit of abatement (but without the addition of penalty; interest will be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas) will become a debt to the CITY and shall be due, owing and paid to the CITY within sixty (60) days of the expiration of the above-mentioned applicable cure period.

6. The CITY represents and warrants that the PREMISES do not include any property that is owned by a member of council or boards, agencies, commissions or other governmental bodies approving or having responsibility for the approval of this Agreement.

7. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by OWNER other than to a wholly-owned subsidiary of OWNER unless written permission is first granted by the CITY, which permission shall be at the sole discretion of the CITY.

8. It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and the CITY assumes no responsibilities or

liabilities in connection therewith to third parties and OWNER agrees to indemnify and hold CITY harmless therefrom.

9. The OWNER further agrees that the CITY, its agents and employees shall have reasonable right of access to the PREMISES to inspect the IMPROVEMENTS in order to insure that the construction of the IMPROVEMENTS are in accordance with this Agreement and all applicable State and local laws and regulations or valid waiver thereof. After completion of the IMPROVEMENTS the CITY shall have the continuing right to inspect the PREMISES to insure that the PREMISES are thereafter maintained and operated in accordance with this Agreement.

10. It is understood and agreed by CITY and OWNER that for purposes of this Agreement, the value of the IMPROVEMENTS and PREMISES shall be as determined annually by the Chief Appraiser of the Dallas Central Appraisal District, subject to the appeal procedures in the Texas Property Tax Code.

11. Subject to the terms and conditions of this Agreement and subject to the rights and holders of any outstanding bonds of the CITY, a portion of ad valorem real property taxes and business personal property taxes from the PREMISES otherwise owed to the CITY shall be abated. Said abatement shall be an amount equal to:

- (a) ninety percent (90%) – year one;
- (b) ninety percent (90%) – year two;
- (c) eighty percent (80%) – year three;
- (d) seventy percent (70%) – year four;
- (e) sixty percent (60%) - year five; and
- (f) fifty percent (50%) – years six through ten

of the taxes assessed upon the increased value of the IMPROVEMENTS over the value in the year in which this Agreement is executed and in accordance with the terms of this Agreement

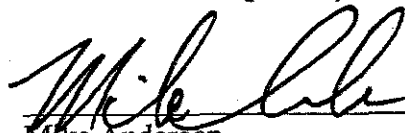
and all applicable State and local regulations or valid waiver thereof; provided that the OWNER shall have the right to protest and/or contest any assessment of the PREMISES and said abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Said abatement shall extend for a period of ten (10) years beginning January 1, 2004, provided the project maintains a taxable value on the IMPROVEMENTS of ten million dollars (\$10,000,000.00) annually and maintains a light assembly operation on the PREMISES.

12. This Agreement was authorized by Resolution No. 29-2002 of the City Council at its Council meeting on June 3, 2002, authorizing the Mayor to execute the Agreement on behalf of the City.

13. This shall constitute a valid and binding Agreement between the CITY and ProLogis Trust when executed in accordance herewith.

14. The Agreement is performable in Dallas County, Texas, witness our hands this 3rd day of June, 2002.

**CITY OF MESQUITE, TEXAS**



Mike Anderson  
Mayor

ATTEST:



Ellen Williams  
City Secretary

APPROVED:



B. J. Smith  
City Attorney

OWNER  
ProLogis Trust

By: Steven K Meyer

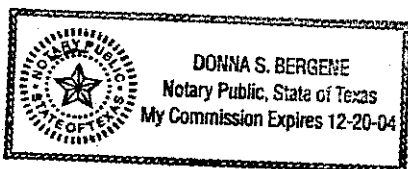
Name: Steven K Meyer

Title: Managing Director

TRUST ACKNOWLEDGMENT

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 12<sup>th</sup> day of July, 2002, by Steven K Meyer, Managing Director of ProLogis Trust.



Donna S Bergene  
Notary Public in and for the State of Texas

My commission expires: 12/20/04