

ORDINANCE NO. 2018-09

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A COMMUNITY REINVESTMENT AREA AGREEMENT WITH PROLOGIS SUBSTANTIALLY IN THE FORM ATTACHED HERETO.

WHEREAS, the Council adopted Emergency Resolution No. 44-2007 on August 14, 2007, describing the boundaries of a Community Reinvestment Area (the "CRA") and determined that such area contains the conditions described in Section 3735.65(B) of the Code and confirmed said area as a Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, the Housing Officer of the City has reviewed the proposed construction of the Project and the facts asserted in the Application and has determined that the proposed construction of the Project meets the requirements for an exemption under Section 3735.67 of the Code; and

WHEREAS, the project site as proposed by Developer is located in the School District and the Butler Technology and Career Center Joint Vocational School District (the "JVSD District"), and the respective Boards of Education of the School District and the JVSD District have been notified in accordance with Section 5709.83 and been given a copy of the Application.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: That this Council hereby approves the CRA Agreement substantially pursuant to the terms and conditions contained in Exhibit "1", a copy of which is on file in the office of the Clerk of Council and attached hereto and made a part hereof. The City Manager is authorized to sign the CRA Agreement, with such changes, which are in the judgement of the City Manager, not materially adverse to the City, as the City Manager shall approve.

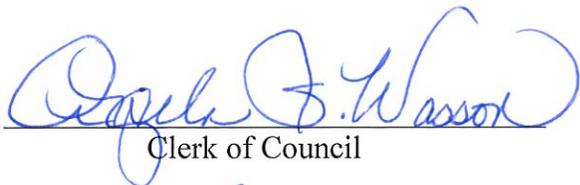
SECTION 2: That, if any section phrase, sentence or portion of this Ordinance is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 3: That this Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law, including ORC Sec. 121.22.

SECTION 4: This measure shall take effect and be in full force from and after the earliest period allowed by law.

PASSED: July 10, 2018

ATTEST:


Clerk of Council

First Reading: May 23, 2018

APPROVED:


Mayor

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

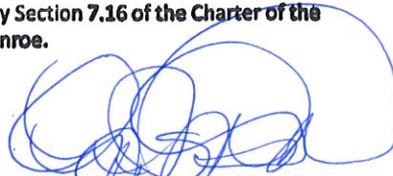

Clerk of Council
City of Monroe, Ohio

Exhibit "1" Ordinance No. 2018-09

COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Agreement (this "Agreement") is made and entered into by and between the City of Monroe, Ohio an Ohio municipal corporation, with its main offices located at 233 South Main Street, Monroe, Ohio (hereinafter referred to as "City") and ProLogis, a Delaware limited liability company with its principal office located at 1100 Peachtree Street NE, Suite 1000, Atlanta, Georgia 30309 (hereinafter referred to as "Developer"), under the following circumstances:

WHEREAS, the Council adopted Emergency Resolution No. 44-2007 on August 14, 2007, describing the boundaries of the Community Reinvestment Area and determined that such area contains the conditions described in Section 3735.65(b) of the Code and confirmed said area as a Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, Developer desires to construct a new "spec" building of approximately 800,000 square feet to be used for the marketing, manufacturing, warehouse or distribution operations of one or more users, as more particularly described on the site plan attached hereto as Exhibit A (the "Project"), which will be located on certain real property within the boundaries of the Community Reinvestment Area as more specifically described on Exhibit A hereto (the "Project Site"), provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, Developer does not anticipate that it will equip or occupy any portion of the Project Site or the Project or hire employees at the Project Site; rather, Developer intends to lease the Project or parts thereof to one or more tenants to be operated for the uses described in the foregoing recital (such tenants may be referred to hereinafter from time to time as the "Operators"); and

WHEREAS, the City, having the appropriate authority, desires to provide Developer with incentives available for the development of the Project in the Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, Developer has submitted a proposed application to the City for this Agreement (which is attached hereto as Exhibit B, hereinafter referred to as the "Application"); and

WHEREAS, Developer has remitted to the City the required state application fee of \$750.00 made payable to the Ohio Development Services Agency which the City will forward to the Ohio Development Services Agency together with this Agreement; and

WHEREAS, the Housing Officer of the City has reviewed the proposed construction of the Project and the facts asserted in the Application and has determined that the proposed construction of the Project meets the requirements for an exemption under Section 3735.67 of the Code; and

WHEREAS, the project site as proposed by Developer is located in the School District and the Butler Technology and Career Center Joint Vocational School District (the "JVSD District"), and

the respective Boards of Education of the School District and the JVSD District have been notified in accordance with Section 5709.83 and been given a copy of the Application; and

WHEREAS, pursuant to Section 3735.67(A) of the Code and in conformance with the format required under Section 3735.671(B) of the Code, the parties hereto desire to set forth their Agreement with respect to matters hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Developer shall construct the Project as described in recitals to this Agreement. The Project will be located on the Project Site. Developer will invest in the Project and the Project Site an amount estimated to exceed thirty three million dollars (\$33,000,000) for the costs of site development and construction of a new building (exclusive of any amounts for acquisition of machinery and equipment, furniture and fixtures, and inventory). There are no existing buildings at the Project Site. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement. The parties recognize that the costs associated with the Project may increase or decrease significantly. The parties also recognize that costs do not necessarily equal otherwise taxable value.
2. The value for Ohio personal property tax purposes of the non-inventory personal property of Developer that is located at another location in Ohio prior to the execution of this Agreement and that is to be relocated from that location to the Project Site is \$0.00. The value for Ohio personal property tax purposes of the non-inventory personal property of Developer located at the Project Site prior to the execution of this Agreement is \$0.00. The average value for Ohio personal property tax purposes of the inventory of Developer held at another location in Ohio prior to the execution of this Agreement and to be relocated from that location to the Project Site is \$0.00.
3. Developer intends to commence construction of the building shell portion of the Project on or about July 1, 2018 and the scheduled estimated completion date for the building shell portion of the Project is no later than approximately July 1, 2019, and for the tenant improvement portion of the Project no later than October 1, 2019. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement.
4. Developer estimates that there will be created at the Project Site, cumulatively, approximately 900 full-time permanent equivalent employee positions, 0 full time temporary equivalent employee positions, 0 part time permanent equivalent employee positions and 0 part time temporary employee positions, with an aggregate annual payroll of approximately \$26,550,000. Hiring of such employees is estimated to commence in approximately September 1, 2019 and to continue incrementally over the succeeding 10 years as set forth in the chart below. Year 1 refers to the year in which the certificate of occupancy is issued and may be less than a full calendar year. Years 2 – 10 are full calendar years following Year 1 from January 1st of the year to December 31st.

Year	Annual Payroll	Associated Income Tax Hurdle
1	\$7,965,000	\$159,300
2	\$19,912,500	\$398,250
3	\$26,550,000	\$531,000
4	\$26,550,000	\$531,000
5	\$26,550,000	\$531,000
6	\$26,550,000	\$531,000
7	\$26,550,000	\$531,000
8	\$26,550,000	\$531,000
9	\$26,550,000	\$531,000
10	\$26,550,000	\$531,000

Currently, the Operators have 0 employees at the Project Site; therefore, no employee positions will be retained by the Operators in connection with the Project. Developer has no employee positions in Ohio and neither do any of the potential Operators who have been identified by Developer (although it is possible that one or more Operators of the Project who have not yet been identified may have employee positions in Ohio). The estimates provided in this Section 4 are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement. The parties recognize that it is anticipated that all employees at the Project Site will be hired by the Operators, not Developer.

5. The City hereby grants Developer a tax exemption for real property improvements made to the Project Site pursuant to Section 3735.67 of the Code which shall be in the following amounts:

50% for 10 years.

The exemption will commence the first year for which the real property improvements would first be taxable but for such exemption from taxation. No exemption shall commence after the tax year ending December 31, 2020 nor extend beyond the tax year ending December 31, 2029. Developer acknowledges that the tax exemption with respect to Project is subject to the filing of a real property tax exemption application with the Housing Officer following the completion of construction of the Project. The City agrees that upon receipt of the real property tax exemption application, the Housing Officer shall certify the tax exemption to the County Auditor.

6. Developer shall endeavor to comply with all applicable provisions of the City's Planning and Zoning Code.

7. Developer shall provide to the Tax Incentive Review Council of the City any information reasonably required by the council to evaluate the property owner's compliance with the Agreement, including returns filed pursuant to Section 5711.02 of the Code if requested by the council.

8. Consistent with the prior practice, the Council has waived the annual fee provided for in Section 3735.671 of the Code. However, the Developer shall pay the Monroe Area Community Improvement Corporation a fee of \$10,000 annually for the term of the abatement.

9. If not paid for by the Operators, Developer if and for so long as they are the Owner of the Project Site or any portion of the Project Site, shall pay such real property taxes, if any, as are not exempted under this Agreement and are charged against the Project and the Project Site and shall file all tax reports and returns as required by law. If Developer fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement will be rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

10. The City shall perform such acts as are reasonably necessary to appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

11. If for any reason the Community Reinvestment Area designation expires, the Director of the Ohio Department of Development revokes certification of the Community Reinvestment Area, or the City revokes the designation of the Community Reinvestment Area, all entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless Developer materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation granted under this Agreement.

12. If the Developer, either through its own operations or leasing the site to an Operator, materially fails to fulfill the payroll obligations (as determined based on the City of Monroe's audited wage reconciliation Form W-3 for such year for the site) as outlined in Section 4 for any year, then the City may terminate or modify the exemptions from taxation granted under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under the Agreement. However, the Developer shall be able to avoid termination or modification of the Agreement for the year in which the payroll estimate was not met by paying the City an amount equal to the value of the abated real property taxes for that year. This penalty payment is payable by June 1 following the calendar year in which the payroll hurdle is not met. The penalty payment provision shall not be used more than twice during the term of the initial exemption. Upon the third year in which the payroll estimate is not met, there is no option for a penalty payment and the City may terminate or modify the Agreement as noted above.

13. If Developer materially fails to fulfill its obligations under this Agreement, or if City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this Agreement.

14. Developer hereby certifies that at the time this Agreement is executed, that Developer does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State

of Ohio, and does not owe delinquent taxes for which Developer is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Revised Code, or, if such delinquent taxes are owed, Developer currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against Developer. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

15. Developer and the City acknowledge that this Agreement must be approved by formal action of the legislative authority of City as a condition for the Agreement to take effect. This Agreement takes effect upon such approval. Developer and the City also acknowledge that the City may require the Developer to execute a partnership agreement with the Monroe Local School District prior to formal approval of this Agreement.

16. Exemptions from taxation granted under this Agreement shall be revoked if it is determined that Developer, any successor property owner, or any related member (as those terms are defined in Section 3735.671 of the Code) has violated the prohibition against entering into this Agreement under Division (E) of Section 3735.671 or Section 5709.62 or 5709.63 of the Code prior to the time prescribed by that division or either of those sections.

17. Developer affirmatively covenants that it has not knowingly made any material false statements to the State or local political subdivisions in the process of obtaining approval of the Community Reinvestment Area Incentives. If any representative of Developer has knowingly made a material false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, Developer shall be required to immediately return all benefits received under the Community Reinvestment Area Agreement pursuant to ORC Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66 (C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC Section 2921.12(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

18. Except as provided below, this Agreement and the benefits and obligations thereof are not transferable or assignable without the express, written approval of the City, not to be unreasonably withheld. The City Manager may, in his or her discretion, approve the transfer or assignment of this Agreement and the benefits and obligations hereof from Developer to Transferee, subject to compliance with the procedure stated below in this Section. If Transferee is a Permitted Transferee, the City Manager hereby does approve, and Developer shall not need further consent by the City with respect to, the transfer or assignment of this Agreement and the benefits and obligations hereof to Permitted Transferee.

"Transferee," as used herein, is defined as each person or entity, except Developer, which is a legal successor in interest to all or any part of the Project or the Project Site (the "Transferred Property") whether by sale, grant, or other means of transfer of interest, including but not limited

to the formation of subsidiaries, affiliates, joint ventures, successor entities or other arrangements used to carry out the terms of this Agreement (each a "Successor").

"Permitted Transferee," as used herein, is defined as (a) any entity in which Developer directly or indirectly holds an ownership interest; (b) successor entities to Developer where Developer had ownership as described in (a) and where there remains at least one other party with an ownership interest; and (c) entities resulting from a consolidation, conversion, acquisition or merger of Developer.

Provided, however, that as a condition to this right to receive tax exemption as set forth in this Agreement, each Transferee shall execute and deliver to the City an Assignment and Assumption Agreement in form and content reasonably satisfactory to the City, wherein such Transferee:

- (a) assumes all obligations of Developer under this Agreement with respect to the Transferred Property, whether the Transferee received the Transferred Property directly from Developer or a Successor, and
- (b) certifies to the validity, as to the Transferee and the Transferred Property, of the representations, warranties and covenants contained herein and in the Assignment and Assumption Agreement

It is acknowledged and agreed by the City that the form of Assignment and Assumption Agreement attached hereto as Exhibit C shall be deemed satisfactory to, and approved by, the City.

Upon approval by the City of such Assignment and Assumption Agreement, as to the Transferred Property, the approved Transferee shall have all entitlements and rights to tax exemption, and obligations, as an "Owner" under this Agreement, in the same manner and with like effect as if the Transferee had been the original Developer and a signatory to this Agreement. The City agrees to execute each such Assignment and Assumption Agreement and to deliver an original thereof to the Transferee (but execution of such agreement by the City will not be a condition to the effectiveness thereof, with respect to an assignment to a Permitted Assignee).

19. The City hereby approves the lease (and further sub-leasing) of all or part of the Project to one or more parties (including, without limitation, Operators) without any further legal documentation or approval, except as may be required by Section 3735.673 of the Code or the City's Planning and Zoning Code. If any Operator relocates or intends to relocate part or all of its operations from another county or municipal corporation in this State to the Project Site and is entitled to the benefits of this Agreement, said Operator or Developer, shall comply with the notice provisions of Section 3735.673 of the Code by providing notice to the legislative authority of the county or municipal corporation from which Operator intends to relocate. A copy of such notice shall also be sent to the City. The City shall serve such notice on the Director of the Ohio Development Services Agency, as required by Section 3735.673 of the Code.

20. If, notwithstanding Section 16 of this Agreement, it becomes necessary to modify the terms of this Agreement to reflect the exact legal and financing structure used by Developer in

developing, equipping and operating the Project, Developer shall request an amendment to this Agreement, which the City shall consider in a timely fashion.

(Balance of Page Intentionally Omitted)

IN WITNESS WHEREOF, the City of Monroe, Ohio, pursuant to Emergency Resolution 2007-16 of the Council of City of Monroe, Ohio, and _____, have caused this instrument to be executed on this ____ day of _____, 2018.

CITY OF MONROE, OHIO

_____,
a Delaware limited liability company

By _____
William J. Brock, P.E., CM
City Manager

By:

By: _____

Name: _____

Title: _____

STATE OF OHIO)
)SS:

Sworn to and subscribed in my presence by
William J. Brock, City Manager of Monroe,
this ____ day of _____, 2018.

Sworn and subscribed in my presence by
_____,
_____, this
____ day of _____, 2018.

Notary Public

Notary Public

Approved as to form:

K. Philip Callahan, Law Director

- Exhibit A – Project Site
- Exhibit B – Application
- Exhibit C – Assignment and Assumption

THIS INSTRUMENT PREPARED BY: The City of Monroe, 233 South Main Street, P.O. Box 330, Monroe, Ohio 45050. 513-539-7374.