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# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2014-35

By Richard T. Malott Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

### AMENDING THE COMMUNITY REINVESTMENT AREA ("CRA") AGREEMENT WITH HELWIG WHISTLE STOP LLC, AND DECLARING AN EMERGENCY.

**WHEREAS**, The Berea City Council adopted Ordinance 2009-18 on February 8, 2009 and Ordinance 2013-19 on March 4, 2013; and

**WHEREAS**, this Council finds that it is appropriate to amend the Community Reinvestment Area Agreement entered into by the City and Helwig Whistle Stop, LLC pursuant to Ordinance 2013-19 to conform with the recommendations made by motion passed at the 2013 TIRC meeting.

**NOW, THEREFORE, BE IT ORDAINED BY THE** Council of the City of Berea, State of Ohio:

**SECTION 1.** That the Mayor is hereby authorized to enter into an amended agreement with Helwig Whistle Stop, LLC amending Sections 1 and 2 of the 2009 agreement as set forth in the Memorandum of Amendment attached hereto as Exhibit "A" and incorporated herein by reference.

**SECTION 2.** That except as amended in the attached Exhibit "A", the Community Reinvestment Area Agreement entered into by the City and A & F Machine on January 26, 2009 is ratified and reaffirmed as written and executed at that time.

**SECTION 3.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 4.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that said amendments must be in place in order for the intended tax abatement to be granted and to further facilitate the intended business expansion and creation of jobs. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

# COUNCIL CHAMBER

City of Berea, Ohio

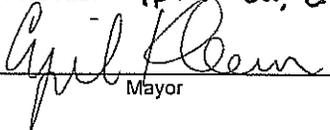
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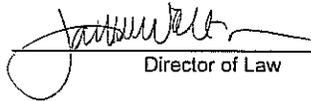
PASSED: April 21, 2014

  
\_\_\_\_\_  
President of Council

ATTEST: Alyce Esmond  
Clerk of Council

APPROVED: April 21, 2014  
  
\_\_\_\_\_  
Mayor

Approved as to Form:

  
\_\_\_\_\_  
Director of Law

**COMMUNITY REINVESTMENT AREA AGREEMENT  
AMENDED**

This Community Reinvestment Area Agreement (the "Agreement"), as herein Amended, and dated as of \_\_\_\_\_, 2014, entered into by and between the City of Berea, Ohio (the "City"), a municipality and political subdivision, organized and existing under the laws of the State of Ohio (the "State"), with its main offices located at 11 Berea Commons, Berea, Ohio 44017, (hereinafter referred to as the "City") and Helwig Whistle Stop, LLC, an Ohio corporation with its offices located at 589 West Bagley Road, Berea, Ohio 44017 ("Business").

WITNESSETH

**WHEREAS**, by Ordinance No. 94-60, 97-24, 2007-11, 2008-27 passed by this Council on June 21, 1994, as amended by 97-24, 2007-11, 2008-27 (collectively the "CRA Ordinance"), the Council found and determined that the Community Reinvestment Area (the "Community Reinvestment Area") designated in Ordinance No. 94-60 constitutes an area in which housing facilities or structures of historical significance are located and in which new construction and repair of existing facilities has been discouraged; and

**WHEREAS**, effective June 20, 1994, the Director of Development of the State determined that the aforementioned area designated in said Ordinance No. 94-60 June 21, 1994, as amended by 97-24, 2007-11, 2008-27 contains the characteristics set forth in Section 3735.66 of the Ohio Revised Code and confirmed said area as a Community Reinvestment Area under said Chapter 3735; and

**WHEREAS**, the City has encouraged the development of real property located in the Community Reinvestment Area; and

**WHEREAS**, Business intends to cause the acquisition and construction of an approximately 6.9 acres to expand operations and permit expansion of its products (hereinafter referred to as the "Project") within the boundaries of the aforementioned Community Reinvestment Area, provided that the appropriate development incentives are available to support the economic viability of said Project; and

**WHEREAS**, the City having the appropriate authority for the Project is desirous of providing Business with incentives available for the development of the Project in the Community Reinvestment Area under Chapter 3735 of the Ohio Revised Code; and

**WHEREAS**, Business has submitted a proposed agreement application (herein attached as Exhibit A) to the City said application (the "Application"); and

**WHEREAS**, Business has remitted the required state application fee of \$750.00 made payable to the Ohio Department of Development with the application to be forwarded to said Department with a copy of the final agreement; and

**WHEREAS**, the administrative staff of the City and the Berea Community Development Corporation (BCDC) investigated the application of Business and has recommended the same to the Council of the City on the basis that Business is qualified by financial responsibility and business experience to create and preserve employment opportunities in said Community Reinvestment Area and improve the economic climate of the City; and

**WHEREAS**, the project site as proposed by Business is located in the Olmsted Falls City School District and Polaris Vocational School District and the Districts have been notified in accordance with

Section 5709.83 and been given a copy of the proposed form of this Agreement together with the Application; and

**WHEREAS**, pursuant to Section 3735.67(A) and in accordance with the format required under Section 3735.671(B) of the Ohio Revised 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 benefits to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Construction of the Project. The Project shall consist of a new facility at 589 West Bagley Road approximately 56,000 square foot facility to construct a 28,000 retail complex with 13-16 storefronts and to construct 28,000 of general office space. Said facility shall be constructed by Business portion of PP#'s 361-09-020, as same is known and designed on the County Auditor's revised list of lots in the second ward 2 of Berea, Ohio.

In connection with the Project Business has expended \$300,000 in acquisition costs. Business agrees that its investment in the Project shall be not less than \$4,300,000 (plus or minus 10%) in the aggregate and that such investment shall be made at the 589 West Bagley Road, Berea, Ohio 44017 site. Included in this investment will be \$4,000,000 for new construction of the facility.

The Project will begin March 15, 2009 and all acquisition and construction will be completed by March 30, 2010.

2. Job Creation and Retention. Developer shall work with end users to estimate and create within a time period not exceeding five (5) years after the commencement of construction of the aforesaid facility, the equivalent of (65) new full-time permanent job opportunities, (12) new part-time permanent job opportunities.

Businesses will create approximately (77) new jobs during the abatement period. The job creation period begins June 2010 and all jobs will be in place by December 31, 2015.

The increase in the number of employees to be created in accordance with this Section 2 will result in approximately \$848,640 of new additional annual payroll for Business. The entire increase in payroll shall be attributed to the creation of positions for full-time permanent employees, and for part-time permanent or part-time temporary employees.

3. Exemption Granted. As authorized under Section 3735.67 of the Ohio Revised Code, the City hereby grants to Business a tax exemption for real property improvements made to the Project Site. Such real property improvements will receive a ten year exemption period, commencing the first year for which such real property improvements would first be taxable were that property not exempted from taxation. The exemptions provided for herein in each year shall be in the amounts set forth below.

<i>Years of Tax Exemption</i>	<i>Tax Exemption Amount</i>
Years 1-10	49%

Business acknowledges and agrees that it shall have sole and full responsibility for filing the appropriate tax forms to effect and maintain the exemptions contemplated herein, including without limitation, form DTE 23 with the County Auditor and that neither the City nor any employee or agent

thereof shall have any responsibility for taking any actions, other than those expressly set forth herein, to effect or maintain such exemption.

4. Provision of Information. Business agrees that it shall promptly provide to the City of Berea Tax Incentive Review Council (the "Council") any information reasonably required by the Council to evaluate Business compliance with this Agreement, including, but not limited to, returns filed pursuant to Section 5711.02 of the Ohio Revised Code if requested by the Council.

5. Annual Fee. Business shall pay to the City an annual fee equal to the greater of one percent of the dollar value of the taxes abated in such year under this Agreement or five hundred dollars: provided, however, that if in any year, the value of the taxes abated pursuant to this Agreement shall exceed two hundred fifty thousand dollars, the fee shall be two thousand five hundred dollars.

Each such payment shall be made to the City on March 1<sup>st</sup> of each year that this Agreement shall be in effect, commencing March 1, 2010 and ending on the March 1<sup>st</sup> of the calendar year following the last tax year in which taxes shall be abated hereunder. Each such payment shall be made to the Director of Finance of the City and shall be made by certified check or such other method as may be approved by the Director of Finance. Any amounts received by the City may be used for such purposes as are authorized by applicable law, including but not limited to Section 3735.671(D) of the Revised Code.

6. Payment of Taxes. Businesses shall pay such real and tangible personal property taxes as are not exempted under this Agreement and are charged against such property and shall file all tax reports and returns as required by law. In the event that the Business fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

7. Further Acts. The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitations, joining to the execution of all documentation, providing any necessary certificates required in connection with such exemptions; provided, however that Business acknowledges and agrees that the City shall have no monetary liability for any damages caused or incurred by Businesses by any failure of the City to perform its obligations under Section 7 or any other provisions of this Agreement. Helwig Whistle Stop, LLC will contribute \$1,000.00 annually to the Berea Community Development Corporation for future business programming and assistance for the duration of the agreement, of which is the first payment is due within 45 days of the passage of this Agreement. Subsequent donations will be made by March 1, of every year the agreement is active.

8. Entitlements to Survive Revocation of Area Designation. If for any reason the Community Reinvestment Area designation expires, the Director of the Ohio Department of Development revokes certification of the area, or the City revokes the designation of the area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless Business materially fails to fulfill its obligation under this Agreement and the City terminates or modifies the exemptions for taxation granted under this agreement.

9. Termination or Modification of the Exemption; Repayment to the City of the Amounts Exempted. If Business materially fails to fulfill its obligation under this Agreement, or if the 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 repayable had the property not

been exempted from taxation. If business relocates from the City of Berea for any reason during the abatement period, the total amount of all taxes abated is due and payable to the City of Berea within 30 days of the said relocation.

10. No Delinquent Amounts. Business hereby certifies that at the time this Agreement is executed Business does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which Business is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code or, if such delinquent taxes are owed, Business currently is paying delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against Business. 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.

Business further covenants that it does not owe (1) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and 2) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

11. Further Approvals. Business and the City acknowledge that this Agreement must be approved by formal action of the legislative authority of the City as a condition for the agreement to take effect. This agreement takes effect upon such approval.

12. Revocation of Exemption Under Certain Circumstances. The exemptions from taxation granted under this agreement shall be revoked if it is determined that Business, any successor property owner, or any related member (as those terms are defined in Section 3735.671 of the Ohio Revised 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 Ohio Revised Code prior to the time prescribed by that division or either of those sections.

13. No False Statements. Business affirmatively covenants that it has made no 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 Business has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, Business acknowledges and agrees that it shall be required to immediately return and shall return, all benefits received under this Agreement pursuant Ohio Revised Code 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 Ohio Revised Code 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 Ohio Revised Code Section 2921.13(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.

14. Business acknowledges that the City has developed a policy to ensure that recipients of Community Reinvestment Area tax benefits practice non-discriminatory hiring in their operations. By executing this Agreement, Business agrees to follow non-discriminatory hiring practices, and acknowledges and agrees that no individual shall be denied employment with Business on the basis of race, religion, sex, disability, color, national origin, or ancestry.

15. Assignment and Transfer. This Agreement is not transferable or assignable without the express, written approval of the City.

16. No Waiver. No failure by the City to insist upon the strict performance by Business of any provisions hereof shall constitute a waiver of the City's right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by Business to observe or comply with any provision hereof, including but not limited to any rights of the City under Section 9 of this Agreement.

17. Miscellaneous. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provisions were not contained herein and each such provision, covenant obligation or agreement shall be deemed to be effective in the manner and to the full extent permitted by law. This Agreement may not be amended except by a written instrument executed by the parties hereto.

All covenants, obligations and agreements of the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any employee, officer, agent, independent contractor or elected representative of the City in other than his or her official capacity, acting pursuant to the laws of the State, and no such employee, officer, agent, independent contractor or elected representative shall be personally liable or in any way obligated by reason hereof or by reason of any other action taken by the City or any representative thereof.

**IN WITNESS WHEREOF**, the City of Berea, Ohio, by its Mayor and Business by its authorized representative, has caused this instrument to be executed all as of the date first written above.

**City of Berea, Ohio**

By \_\_\_\_\_  
**Mayor**

**Business**

By \_\_\_\_\_  
**Title**

**Approved as to form:**

\_\_\_\_\_  
**Director of Law**

Note: A copy of this agreement must be forwarded to the Ohio Department of Taxation and Development within fifteen (15) days of finalization.

Additional Note (file copy only): Amended 2014 to conform to Motions adopted at 2013 TIRC meeting. The only section amended is Section 2. Job Creation and Retention