

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2016-49

By Jim Maxwell Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

### AUTHORIZING THE MAYOR TO ENTER INTO A COMMUNITY REINVESTMENT AREA ("CRA") AGREEMENT WITH AUDION AUTOMATION, AND DECLARING AN EMERGENCY.

WHEREAS, Audion Automation, conducting business at 775 Berea Industrial Parkway, Berea, Ohio, (Permanent Parcel Number 361-35-020), intends to further develop said land by expanding the existing structure for commercial use; and

WHEREAS, Audion Automation will occupy the property and building under an agreement, and continue to operate a Business there; and

WHEREAS, such redevelopment project qualifies for benefits associated with the City's duly adopted (as amended) Community Reinvestment Area Program.

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 a Community Reinvestment Area Agreement with Audion Automation in substantially the form of Agreement attached hereto as Exhibit "A" and incorporated herein.

SECTION 2. 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 3. 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 Agreement must be in place before improvements on the property may begin, and the improvements are ready to immediately commence upon such approval, thereby enhancing business expansion and creating 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.

PASSED: May 16, 2016

ATTEST: [Signature]  
Clerk of Council

APPROVED AS TO FORM:

[Signature]  
Director of Law

[Signature]  
President of Council

APPROVED: May 17, 2016

[Signature]  
Mayor

2016-49  
Exhibit "A"

Ord. 4-12  
Exhibit "A"

## COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Area Agreement (the "Agreement"), dated as of May \_\_, 2016, is entered into by and between the City of Berea, Ohio (the "City"), a municipal corporation 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"); RWBB Holdings, LLC, an Ohio Limited Liability Company with its offices located at 775 Berea Industrial Parkway, Berea, Ohio 44017 (hereinafter referred to as "RWBB"); and Audion Automation, a partnership with its offices located at 775 Berea Industrial Parkway, Berea, Ohio 44017 ( hereinafter referred to as "Audion").

### 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**, Audion intends to construct an approximately 25,000 Square Foot Industrial addition onto its existing facility located at 775 Berea Industrial Parkway, Berea, Ohio 44017 and known as Permanent Parcel Number 361-35-020 (hereinafter also referred to as the "Site") to create additional manufacturing space (hereinafter also 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**, Audion designs and manufactures 'packaging machinery and equipment' that is utilized in both domestic and international applications. Currently, Audion has facilities in Berea, Ohio; Wisconsin; California; and Texas; and

**WHEREAS**, Audion is interested in consolidating both of its California and Texas operations into it's Berea facility. When comparing the costs and benefits of building the Project in Berea versus Wisconsin, the CRA Tax Abatement makes the Project more economically viable in Berea; and

**WHEREAS**, the Project maximizes the use of property owned by RWBB and is likely to encourage similar development within the general area; and

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

**WHEREAS**, RWBB and Audion have submitted a proposed agreement application (herein attached as Exhibit A) to the City and said application is hereinafter referred to the "Application"; and

**WHEREAS**, RWBB and Audion have 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 investigated the application of RWBB and Audion and has recommended the same to the Council of the City on the basis that RWBB and Audion are 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**, Audion is currently located in Berea with 37 Full-Time Employees and wishes to expand but cannot expand within its current building; and

**WHEREAS**, If Audion builds the proposed Project pursuant to this agreement, Audion will retain 37 Full-Time Employees and projects the addition of seven (7) additional Full Time Employees by 12-31-2017, seven (7) additional Full Time Employees by 12-31-2018, four (4) additional Full Time Employees by 12-31-2019, and three (3) additional Full Time Employees by 12-31-2020; and

**WHEREAS**, If Audion builds the proposed Project pursuant to this agreement and hires the new Full Time employees as projected, the additional payroll is estimated to be \$300,000.00 in 2017; \$250,000.00 in 2018; \$200,000.00 in 2019; and \$150,000.00 in 2020; 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 the construction of an approximately 25,000 square foot addition to provide additional manufacturing space for Audion. Said addition shall be constructed on the Site which is located in the Ward 2 of Berea, Ohio.

Audion agrees that the investment in the Project shall be not less than \$1,300,000.00 (plus or minus 10%) in the aggregate and that such investment shall be made at the Site. Included in this investment will be \$1,000,000.00 for construction of the Project.

The Project will begin in \_\_\_\_\_, 2016 and all acquisition and construction will be completed by \_\_\_\_\_, 2017.

2. Job Creation and Retention. RWBB, Audion or tenants of the Site shall work to estimate and create within a time period not exceeding five (5) years after the issuance of the Occupancy Permit for the Project, the equivalent of fourteen (14) new full-time permanent job opportunities.

RWBB, Audion or tenants of the Site will retain thirteen (13) full-time permanent jobs during the abatement period.

The increase in the number of employees to be created in accordance with this Section 2 will result in approximately \$900,000.00 of new additional annual payroll for RWBB, Audion or its tenants. The entire increase in payroll shall be attributed to the creation of permanent employment positions.

3. Exemption Granted. As authorized under Section 3735.67 of the Ohio Revised Code, the City hereby grants to RWBB and Audion a tax exemption for real property improvements made to the 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%

RWBB and Audion acknowledge and agree that they 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. RWBB and Audion agree that they shall promptly provide to the City of Berea Tax Incentive Review Council (the "Council") any information reasonably required by the Council to evaluate the compliance of RWBB and Audion with this Agreement, including, but not limited to, employee counts, payroll figures, and returns filed pursuant to Section 5711.02 of the Ohio Revised Code if requested by the Council.

5. Annual Fee. RWBB and Audion 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, 2017 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. RWBB and Audion 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 RWBB and Audion fail 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 RWBB and Audion acknowledge and agree that the City shall have no monetary liability for any damages caused or incurred by RWBB and Audion by any failure of the City to perform its obligations under Section 7 or any other provisions of this Agreement. RWBB and Audion will contribute \$500.00 annually to the City of Berea Special Events Fund for the support of events put on or sponsored by the city or not-for-profit organizations

for the support of events that draw people to Berea and to Berea businesses for the duration of the agreement, of which the first payment is due within 45 days of the passage of this Agreement. Subsequent donations will be made by August 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 RWBB and Audion materially fail 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 RWBB and Audion materially fail 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 RWBB and Audion 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. RWBB and Audion hereby certify that at the time this Agreement is executed RWBB and Audion 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 RWBB and Audion is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code or, if such delinquent taxes are owed, RWBB and/or Audion 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 RWBB or Audion. 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.

RWBB and Audion further covenant that they do 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. RWBB, Audion 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 RWBB or Audion, 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. RWBB and Audion affirmatively covenant that they have 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 RWBB or Audion has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, RWBB and Audion acknowledge and agree that they 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. RWBB and Audion acknowledge 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, RWBB and Audion agree to follow non-discriminatory hiring practices, and acknowledges and agrees that no individual shall be denied employment with RWBB or Audion 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 RWBB or Audion 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 RWBB or Audion 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, RWBB and Audion by its authorized representatives, have caused this instrument to be executed all as of the date first written above.

City of Berea, Ohio

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

RWBB Holdings, LLC.

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

Audion Automation

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.