

Ordinance No. 7 20 21

ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A COMMUNITY REINVESTMENT AREA AGREEMENT WITH SJN DATA CENTER LLC DBA ENCORE TECHNOLOGIES, AND DECLARING AN EMERGENCY.

WHEREAS, Council has approved by Ordinance No. 18-2009 a program known as the City of Norwood Community Reinvestment Area Program, for the promotion of economic development and by Ordinance No. 14-2015, Council has extended that program until repealed by Council; and

WHEREAS, SJN Data Center LLC dba Encore Technologies proposes to participate in the program and construct approximately 20,000 square feet of Office and Data Center space; and

WHEREAS, the City of Norwood and SJN Data Center LLC dba Encore Technologies seek to enter into a Community Reinvestment Area Agreement to provide for tax incentives to facilitate that project; now therefore,

BE IT ORDAINED by the Council of the City of Norwood, State of Ohio, that:

SECTION 1. The Mayor is hereby authorized to enter into a Community Reinvestment Area Agreement among the City of Norwood and SJN Data Center LLC dba Encore Technologies, the same as, or substantially similar in terms to, the Agreement which is attached hereto and incorporated herein by reference as Exhibit "A".

SECTION 2. This ordinance is hereby declared an emergency measure necessary to protect the health, safety, and welfare of community and shall go into effect immediately so that SJN Data Center LLC dba Encore Technologies can begin work quickly to transform this space into its most productive use, but under the Community Reinvestment Area Program, cannot proceed with any permits or construction until the CRA Agreement is approved by this Council.

PASSED

3-9-21

Date

Ken Miracle
President of Council

ATTEST:

Maria Williams, the duly appointed Clerk of Council, attests that this ordinance was passed at a regular special meeting of Norwood City Council on the 9th day of March, 2021 in compliance with the rules of Norwood City Council and the laws of the State of Ohio. The foregoing ordinance was submitted to the Mayor of the City of Norwood, Ohio for his signature on the 9th day of March, 2021.

Maria Williams
Clerk of Council

APPROVED 11 MARCH 21
Date

Victor Schneider
Victor Schneider
Mayor

CERTIFICATION OF PUBLICATION:

Maria Williams, the duly appointed Clerk of Council, attests that this Ordinance was published in the _____ on _____ and _____.
(Name of Newspaper) (date) (date)

Maria Williams
Clerk of Council

ORDINANCE READINGS

1st Reading _____
Date

2nd Reading _____
Date

3rd Reading _____
Date

All 3 Readings 3-9-21
Date

Tabled _____
Date

Vetoed _____
Date

**City of Norwood, Ohio
Community Reinvestment Act (CRA)
Commercial Application**

City of Norwood Building Department
4645 Montgomery Road
Norwood, Ohio 45212
Phone: (513) 458-4510
Fax: (513) 458-4511

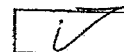
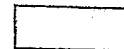
For Office Use Only
Received:

Project Address: 4620 WESLEY AVE. NORWOOD OHIO 45212
Parcel #: _____
Property Owner: 4620 WESLEY LLC

I/we am/are applying for:

- Commercial Remodel
- New Commercial Construction
- New Jobs Created

- Annual Payroll



\$ 9MM
\$ 8MM ENCLOSE
\$ 1MM CUSTOMER
60 IN 3 YEARS

CURRENT \$12MM/YEAR
ADDITIONAL \$4.5 MM/YEAR

CRA Program Criteria and Requirements

Commercial Remodel

- Minimum of \$75,000 construction investment
- Eligible for up to and including 49% exemption of added value of the property for twelve (12) years, with agreement approved by City Council. Specific terms of each project's exemption shall be negotiate on a case-by-case basis and committed to writing in advance of the construction occurring.
- Application must be accompanied by signed contracts and documentation

New Commercial Construction

- Minimum of \$250,000 new commercial construction investment
- Eligible for up to and including 49% exemption of added value of the property for fifteen (15) years, with the agreement approved by City Council. All tax abatements above 49% must be approved by the Norwood Board of Education and City Council. Specific terms of each project's exemption shall be negotiate on a case-by-case basis and committed to writing in advance of the construction occurring.
- Application must be accompanied by signed contacts and documentation

Property Owner Signature

Date:

1/12/2021

COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Area Agreement (hereinafter called the "Agreement") dated and effective as of the ____ day of _____, 2021, by and between the City of Norwood, Ohio, a municipal corporation (hereinafter called "City"), having its office at 4645 Montgomery Road, Norwood, Ohio 45212 and SJN Data Center, LLC dba Encore Technologies, an Ohio limited liability company (hereinafter called "Developer"), having its principal office at 4620 Wesley Avenue, Norwood, Ohio 45212.

Witnesseth

WHEREAS, the City encourages the development of real property and the acquisition of personal property located within the City; and

WHEREAS, the City has prepared and approved a program known as the City of Norwood Community Reinvestment Area program (hereinafter called the "Program") for the maintenance of existing structures and the construction of new structures to encourage economic stability, maintain real property values, and generate new employment opportunities, and Council for the City made findings and determination relative thereto, by Ordinance No. 18-2009 passed April 14, 2009 (copy attached); and

WHEREAS, such Program allows for the abatement of real property taxes on improvements made to property located within the designated Community Reinvestment Area; and

WHEREAS, City is engaged in and committed to carrying out the goals and objectives of the Program; and

WHEREAS, Developer seeks to renovate approximately 20,000 square feet of Office and Data Center space within the boundaries of the aforementioned Community Reinvestment Area (hereinafter called the "Project"); and

WHEREAS, the City having the appropriate authority for the stated type of project seeks to provide the Developer with incentives available for the development of the Project in said Community Reinvestment Area under Chapter 3735 of the Ohio Revised Code; and

WHEREAS, the Developer has submitted a proposed agreement application herein attached as Exhibit "A" and referred to as "Application", to the City; and

WHEREAS, the Developer has remitted the required state application fee of \$750 made payable to the Ohio Development Services Agency with the Application to be forwarded to said Department with a copy of the final Agreement; and

WHEREAS, the Housing Officer of the City has investigated the Application of the Developer and has recommended the same to the Council of the City on the basis that the Developer 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 the Developer is located in the Norwood City School District and the Great Oaks Joint Vocational School District and the Boards of Education for Norwood City School District and the Great Oaks Joint Vocational School District have been notified in accordance with Section 5709.83 of the Ohio Revised Code and have been given a copy of the Application; and

WHEREAS, Pursuant to Section 3735.67 and in conformance with the format requirements of Section 3725.671 of the Ohio Revised Code the parties hereto desire to set forth their agreement with respect to matters hereinafter contained;

NOW, THEREFORE, for and in consideration of the premises and the mutual obligations of the parties hereto, each of them hereby covenant and agree with the other as follows:

SECTION 1. Construction of Improvements

- (a) The Developer shall renovate approximately 20,000 square feet of the facility of approximately 95,000 total square feet located at 4620 Wesley Avenue in the City of Norwood, Ohio, to house its Office and Data Center and to permit the expansion of its services. Said facility is to be constructed on Parcel No. 651-0022-0227-00 within the City of Norwood.
- (b) The project will involve a total investment by the Developer of approximately Nine Million dollars (\$9,000,000) plus or minus ten (10) percent located at 4620 Wesley Avenue. A summary is attached hereto and incorporated herein as Exhibit "B".
- (c) In accordance with local and State laws, major modifications, as long as constructed in accordance with plans submitted as part of the application, must be approved by the City which will not be unreasonably withheld or delayed. The Project will begin on or about March 2021, and all acquisition, construction, and installation will be completed on or about August 2021.
- (d) All improvements constructed on the subject property shall be developed and redeveloped in accordance with all applicable zoning requirements, building codes, and pursuant to this Agreement, and shall be principally for parking, public utilities, commercial purposes, and other matters as more fully described in this Agreement.

SECTION 2. Responsibilities of Developer

- (a) The Developer hereby agrees that it will occupy, and that it will make a reasonable effort to prevent the occupancy by others of any portion of the

subject property it owns for other than legal purposes or in a manner which would violate any federal, state, or local law applicable thereto.

- (b) The Developer shall renovate the property in accordance with plans and specification on file with the Building Department. In accordance with local and State laws, major modifications must be approved by the City which will not be unreasonably withheld or delayed. All improvements shall be designed and built in a quality manner at least equal in design and construction to recent projects in the vicinity of the subject property such as American Laundry, Linden Pointe Office Park, and Norwood Professional Center. The cost of the renovation, excluding the cost of land, shall exceed seventy-five thousand dollars (\$75,000).
- (c) During construction, the Developer covenants and agrees that it will cooperate with the City ensuring that traffic flow from the Project onto the adjacent public streets is handled in such a manner so as to minimize disruption of normal traffic patterns, to minimize (to the extent reasonably possible) the movement of the construction trucks in residential areas, and to promote the best traffic flow from the subject property onto the adjacent public streets.
- (d) The Developer agrees to properly maintain and repair Project throughout the period of tax exemption authorized herein. The Developer will allow the Housing Officer or the Housing Officer's designee to enter upon and to inspect the Property as reasonably required and in accordance with Section 3735.68 of the Ohio Revised Code and applicable City Ordinances.

SECTION 3. Jobs to be Created and or Maintained by Company

- (a) The Developer is renovating the facility to provide additional Office and Data Center space operated and managed by SJN Data Center LLC dba Encore Technologies ("the Company"). The Company currently has 112 full-time permanent employees; 1 part-time, permanent employees; 13 full-time, temporary employees; and 2 part-time, temporary employees at the Project site.
- (b) The Company currently has 128 employees at the project site. If not in Norwood: The Company is currently located in Norwood, OH. The Company currently has 161 full-time permanent employees; 7 part-time, permanent employees; 34 full-time, temporary employees; and 5 part-time, temporary employees in the State of Ohio.
- (c) Upon completion of the Project, the Company shall exert good faith efforts to create within a time period not exceeding forty-eight (48) months after the commencement of construction of the aforesaid facility, equivalent of 85 full-time permanent job opportunities; 6 new part-time permanent job opportunity; 20 full-time temporary job opportunities; and 2 part-time temporary job opportunities.

- (d) The Company's schedule for planned hiring is as follows: create 15 new jobs in year one (construction); 20 new full-time permanent jobs and 3 part-time permanent jobs in year two; 20 new full time permanent jobs in year three, 30 new full-time permanent jobs in year four; and 3 new part time permanent jobs in year three. The job creation period begins 2021 and good faith efforts will be made to have all jobs in place by 2024.
- (e) The increase in the number of employees (from 161 full-time permanent and 7 part-time permanent to 246 full time permanent and 13 part-time permanent (will result in approximately Six Million Three Hundred Thousand (\$6.3MM) Dollars of additional annual payroll for the Company. The following is an itemization by the type of new jobs created: 85 new full time-permanent, 20 full time-temporary, 6 part-time permanent, and 2 part-time temporary.

SECTION 4. Tax Exemption Application, Fee, and Review

- (a) The Developer shall file appropriate tax forms with the County Auditor to effect and maintain the Exemptions covered in this Agreement.
- (b) The Developer shall provide to the proper Tax Incentive Review Council any information reasonably required by such Council to evaluate the compliance with the Agreement, including returns filed pursuant to Section 5711.02 of the Ohio Revised Code if requested by the Council.
- (c) During the term of this Agreement as required by Section 3735.67(C) of the Ohio Revised Code, the Developer shall pay an annual fee equal to the greater of one percent of the dollar value of incentives offered under the Agreement or five hundred dollars (hereinafter called the "Fee"); provided, however, that the Fee shall not exceed two thousand five hundred dollars. The Fee shall be made payable to the City once per year for each year the Agreement is effective on the days and in the following form: The Fee is to be paid and made out to the City. This fee shall be deposited into the City of Norwood Community Reinvestment Area Fund and shall be used exclusively for the purpose of complying with Section 3735.671 of the Ohio Revised Code and by the Tax Incentive Review Council created under Section 5709.85 of the Ohio Revised Code exclusively for the purposes of performing the duties prescribed under that section.
- (d) The Developer shall pay any real and tangible personal property taxes assessed on the Project and are not exempted under this Agreement, and shall file all tax reports and returns as required by law. If the Developer fails to pay such taxes or file such returns and reports and fails to remedy such failure in a reasonable time, all incentives granted under this Agreement may be rescinded beginning with the year for which such taxes are not paid or such reports or returns are not filed and thereafter and the City 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.

- (e) As required by Section 3735.671(E) of the Ohio Revised Code if the Developer discontinues operations at the Project prior to the expiration of the term of this Agreement, Developer, any successor in interest, and any related member shall not enter into an agreement under this section or section 5709.62, 5709.63, or 5709.632 of the Ohio Revised Code.

SECTION 5. Responsibilities of the City

- (a) The City of Norwood hereby grants the Developer a tax exemption for real property improvements made to the Project pursuant to Section 3735.67 of the Ohio Revised Code and shall be in the following amounts: forty-nine (49%) percent of the real property improvements created by the Project for a period of twelve (12) years (hereinafter called the "Exemption"). The Exemption commences on the day the Certificate of Occupancy for the Project is issued, provided that the Exemption shall not commence after June 1, 2022 nor extend beyond May 31, 2034.
- (b) 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 limitation, joining in the execution of all documents and providing any necessary certificates required in connection with such exemption.

SECTION 6. Continuation of the Agreement

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

SECTION 7. Certification of Taxes Paid

- (a) The Developer hereby certifies that at the time of this agreement is executed, the 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 the Developer is liable under Chapters 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or , if such taxes are owed, the 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 bankruptcy under 11 U.S.C.A. 101 et seq., or such a petition

has been filed against the 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 Ohio Revised Code governing payment of those taxes.

- (b) The Developer affirmatively covenants that, to its knowledge, it does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or State agency for the administration or enforcement of any environmental laws of the State; and (3) 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.

Section 8. Default/Cure

- (a) If the Developer materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement or the covenant of satisfaction of tax and other obligations is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement. A modification of exemption may be in the form of reduction in the number of years that the eligible property is exempt and/or a reduction in the exemption percentage.
- (b) Exemptions from taxation granted under this agreement shall be revoked if it is determined that the Developer, 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 Sections 5709.62 or 5709.63 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.
- (c) Prior to such termination, modification, or payment requirement, the City shall give the Developer written notice and thirty (30) days to cure the breach or to show cause why it should not be deemed in default.
- (d) In the event of termination or modification of this Agreement, the City is authorized to notify the appropriate taxing authorities in order to effect the termination or modification.
- (e) If payment for previously exempt taxes is required by the City under this section, such amount shall be paid as directed by the City within thirty (30) days of written demand. Amounts due and not paid when due shall bear interest at the rate specified in Section 1343.03(A) of the Ohio Revised Code.

SECTION 9. Miscellaneous

- (a) The Developer and the City acknowledge that this Agreement must be approved by formal action of the Council of the City as a condition for the Agreement to take effect. This Agreement takes effect upon such approval.
- (b) The Developer acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate State and/or county taxing authorities. The Developer acknowledges that the City does not give any guarantee or assurance that the exemptions approved in this Agreement will be so approved, and the Developer agrees in no event shall the Developer seek to hold the City liable in any way in the event such exemptions are not granted and implemented.
- (c) The City represents that this Agreement is in material compliance with the Program and that the City has the power to enter into this Agreement and carry out the full obligations hereunder.
- (d) The City desires to ensure recipients of the Community Reinvestment Area tax benefits practice non-discriminating hiring in its operations. By executing this Agreement, the Developer is committing to follow non-discriminatory hiring practices and acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
- (e) The Developer affirmatively covenants that it has made no false statements to the State or local political subdivision in the process of obtaining approval of the Program incentives. If any representative of the Developer has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, the Developer shall be required to immediately return all benefits received under the Community Reinvestment Area Agreement pursuant to Ohio Revised Code Section 9.66 and shall be ineligible for any future economic development assistance from the State, any state agency or political subdivision pursuant to Ohio Revised Code Section 9.66. 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.
- (f) To the extent provided by applicable law, the City shall not disclose to third parties, without the express written consent of the Developer any and all non-public, confidential, or proprietary information or data that is identified as such, and is furnished to the City concerning the Project (the "Confidential Information"). In the event the City believes, upon the advice of counsel, that any Confidential Information is subject to disclosure, it shall promptly furnish written notice to the Developer prior to the disclosure and shall permit the Developer an opportunity to review the request to effect any legal remedies

available to it at law and equity under the laws of the State. The City agrees to limit access to any Confidential Information by its employees, agents, and representatives and to maintain reasonable safeguards to ensure that it shall not inadvertently disclose any Confidential Information to third parties.

- (g) Unless otherwise specified herein, each party agrees to address written notices, demands, and communications in connection with this Agreement to the other party as follows:

To the City:

Building Commissioner/Housing Officer
City of Norwood
4645 Montgomery Road
Norwood, Ohio 45212

To the Developer:

Prior to the Completion of the Project:

Encore Technologies
4620 Wesley Avenue
Norwood, OH 45212

After the completion of the Project:

Encore Technologies
4620 Wesley Avenue
Norwood, OH 45212

- (h) This Agreement is not transferable or assignable without the express written approval of the City.
- (i) During construction, Developer agrees to acknowledge the support of the City on construction, and exhibition signage, and any advertisement regarding the construction of the Project appearing on the internet, television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Developer shall use the phrase, "Project Assistance by the City of Norwood".
- (j) The Developer agrees that no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the Project, nor any immediate family member, close business associate, or organization which is about to employ any such person, shall have any personal financial interest, direct, or indirect, in the Developer or in this

Agreement and the Developer shall take appropriate steps to assure compliance.

- (k) This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.
- (l) This Agreement shall be severable, if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.
- (m) This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, nor shall any failure to enforce any provision hereof operate as waiver of such provision or of any other provision.
- (n) This Agreement constitutes the entire agreement between the City and the Developer with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto. No amendment or modification of this Agreement shall be binding upon the parties unless made in writing and signed by both the City and the Developer.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the said parties have hereto set their hands by their duly authorized offices, and affixed the seals of said parties, this _____ day of _____, 2021.

SJN Data Center LLC
Dba Encore Technologies

CITY OF NORWOOD

By: _____

John Burns
CEO

By: _____

John Murphy
Safety-Service Director

Printed Name

By: _____

Title: _____

Victor Schneider
Mayor

By: _____

Dan Bly
Housing Officer/Building
Commissioner

APPROVED AS TO FORM:

By: _____

Assistant Law Director