

ORDINANCE NO. 81-13
EXHIBIT 1

OHIO ENTERPRISE ZONE AGREEMENT

THIS AGREEMENT made and entered into by and between the **CITY OF AVON**, Lorain County, Ohio, a Municipal Corporation and political subdivision duly organized and existing under the laws of the State of Ohio, with its main offices located at 36080 Chester Road, Avon, Ohio (hereinafter referred to as "CITY"), and **JENNE FAMILY LIMITED PARTNERSHIP**, an Ohio Limited Partnership, with its main offices located at 3107 N. Windsor Court, Westlake, Ohio 44145 (hereinafter referred to as "ENTERPRISE") and **JENNE, INC.**, an Ohio corporation, with its main offices located at 33665 Chester Road, Avon, Ohio 44011 (hereinafter referred to as "EMPLOYER"):

W I T N E S S E T H:

WHEREAS, the CITY has encouraged the development of real property and the acquisition of personal property located in the area designated as an Enterprise Zone; and

WHEREAS, the ENTERPRISE has property located on Chester Road within the City of Avon (hereinafter referred to as the "Property") and plans to construct an addition to its existing manufacturing facility of approximately 65,000 square feet, situated on Permanent Parcel Numbers 04-00-021-000-280 and 04-00-021-000-268 (See attached Exhibit One) and thereby create new employment opportunities (hereinafter referred to as the "Project") for the EMPLOYER within the boundaries of the aforementioned Enterprise Zone, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the Council of the City of Avon, Ohio, by Ordinance No. 44-94, adopted March 28, 1994, designated the area as an "Enterprise Zone" pursuant to Chapter 5709 of the Ohio Revised Code; and

WHEREAS, effective May 24, 1994, the Director of Development of the State of Ohio determined that the aforementioned area designated in said Ordinance No. 44-94 contains the characteristics set forth in Section 5709.61(A) of the Ohio Revised Code and certified said area as an Enterprise Zone under said Chapter 5709; and

WHEREAS, the CITY, having the appropriate authority for the stated type of project is desirous of providing the ENTERPRISE with incentives available for development of the Project in said Enterprise Zone under Chapter 5709 of the Ohio Revised Code; and

WHEREAS, the ENTERPRISE has submitted the required State application fee of Seven Hundred Fifty (\$750.00) Dollars made payable to the Ohio Development Services Agency with the application to be forwarded with the final Agreement; and

WHEREAS, the ENTERPRISE has submitted a proposed agreement application (herein attached as Exhibit Two) to the CITY, (said application hereinafter referred to as "Application"); along with the application fee of Five Hundred (\$500.00) Dollars payable to the City of Avon pursuant to ACO §234.02; and

WHEREAS, the CITY has investigated the application of the ENTERPRISE, and has recommended the same to Council and/or the Board of Commissioners of Lorain County on the basis that the ENTERPRISE is qualified by financial responsibility and business experience to create and preserve employment opportunities with the EMPLOYER in said Enterprise Zone and improve the economic climate of the CITY; and

WHEREAS, the project site, as proposed by the ENTERPRISE is located in the Avon School District and the Board of Education of the Avon School District and Lorain County Joint Vocational School have been notified in accordance with Section 5709.83 and been given a copy of the Application; and

WHEREAS, pursuant to Sections 5709.62(C), 5709.63(A) and/or 5709.632 and in conformance with the format required under Section 5709.631 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 benefit to be derived by the parties from execution hereof, the parties herein agree as follows:

1. The ENTERPRISE shall construct an additional Sixty-Five Thousand (65,000) square foot addition to its existing facility at 33665 Chester Road, Avon, Ohio, situated on Permanent Parcel Numbers 04-00-021-000-280 and 04-00-021-000-268 (See attached Exhibit One) to house the new and additional equipment, machinery, furniture, fixtures and inventory associated with the manufacturing operation of the EMPLOYER.

The Project will involve an estimated minimum total investment by the ENTERPRISE and the EMPLOYER of Eighteen Million, One Hundred Thousand (\$18,100,000.00) Dollars. Included in this investment are Five Million (\$5,000,000.00) Dollars for construction of additional improvements to its existing buildings and Two Million, Six Hundred Thousand (\$2,600,000.00) Dollars to purchase machinery and equipment; Five Hundred Thousand (\$500,000) Dollars to purchase furniture and fixtures and Ten Million (\$10,000,000.00) Dollars in inventory. The total investment in this Project represents a "significant" new investment in the CITY. The Project will begin during the second (2nd) quarter of 2013, and all acquisition, construction and installation will be completed during the fourth (4th) quarter of 2013.

2. The EMPLOYER, on behalf of the ENTERPRISE, shall create within a time period commencing with the filing of their application (See Exhibit 2) up to, but not exceeding, Thirty-Six (36) months after the completion of construction of the aforesaid facility, the equivalent of Twenty-Four (24) full-time permanent job opportunities. All these are new jobs to Ohio. The EMPLOYER'S schedule for hiring over the three (3) year period will be as follows:

<u>Year</u>	<u>Employees</u>
Year One	8
Year Two	8
<u>Year Three</u>	<u>8</u>
TOTAL	24

The creation of these permanent full-time jobs will result in approximately One Million, Nine Hundred Twenty Thousand (\$1,920,000.00) Dollars of additional payroll in the first 36 months of operation.

3. The ENTERPRISE shall provide to the proper Tax Incentive Review Council any information reasonably required by the Review Council to evaluate the ENTERPRISE'S compliance with the Agreement, including returns filed pursuant to Section 5711.02 of the Ohio Revised Code if requested by the Review Council.

4. The CITY hereby grants to the ENTERPRISE a tax exemption on its real property situated on Permanent Parcel Numbers 04-00-021-000-280 and 04-00-021-000-268 (See attached Exhibit One) pursuant to Sections 5709.62(C), 5709.63(A) and/or 5709.632 of the Ohio Revised Code in the following amounts:

<u>Year of the Tax Exemption</u>	<u>Tax Exemption Amount</u>
Year 1	75%
Year 2	75%
Year 3	75%
Year 4	60%
Year 5	60%
Year 6	60%
Year 7	50%
Year 8	50%
Year 9	50%
Year 10	50%

The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. The exemption shall commence in the year in which the improvements become taxable on the Lorain County Auditor's tax list and shall extend for no more than ten (10) years beyond that date.

5. Although not applicable at this time, if the State of Ohio shall reinstate its personal property tax, the CITY, hereby grants to the ENTERPRISE a tax exemption pursuant to Sections 5709.62(C), 5709.63(A) and/or 5709.632 of the Ohio Revised Code, (or those similar to same) for eligible new tangible personal property acquired in conjunction with the Project in the following amounts:

<u>Year of the Tax Exemption</u>	<u>Tax Exemption Amount</u>
Year 1	75%
Year 2	75%
Year 3	75%
Year 4	60%
Year 5	60%
Year 6	60%
Year 7	50%
Year 8	50%
Year 9	50%
Year 10	50%

The exemption commences the first year for which the personal property would first be taxable were that property not exempted from taxation. The exemption shall commence in the year in which the improvements become taxable on the Lorain County Auditor's/Treasurer's tax list and shall extend for no more than ten (10) years beyond that date.

6. The ENTERPRISE has submitted the required State application fee of Seven Hundred Fifty (\$750.00) Dollars made payable to the Ohio Department of Development and the City application fee of Five Hundred (\$500.00) Dollars made payable to the City of Avon (ACO §234.02). Said State application fee will be forwarded with the final Agreement.

7. The ENTERPRISE must file the appropriate tax forms (DTE 23) with the Lorain County Auditor and (#913) with the Ohio State Department of Taxation to effect and maintain the exemptions covered in the Agreement. The #913 Ohio tax form must be filed annually.

8. The ENTERPRISE shall pay an annual fee equal to the greater of One (1%) percent of the dollar value of incentive offered under the Agreement or Five Hundred (\$500.00) Dollars; provided, however, that if the value of the incentives exceed Two Hundred Fifty Thousand (\$250,000.00) Dollars, the fee shall not exceed Two Thousand Five Hundred (\$2,500.00) Dollars.

The fee shall be made payable to the Lorain County Commissioners once per year for each year the Agreement is effective on the days and in the form of a certified check. This fee shall be deposited in a special fund created for such purpose and shall be used exclusively for the purpose of complying with Section 5709.68 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.

9. The ENTERPRISE 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 ENTERPRISE 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.

10. The ENTERPRISE and the EMPLOYER shall perform such acts as are reasonable, 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 documentation and providing any necessary certificates required in connection with such exemptions.

11. If for any reason the Enterprise Zone designation expires, the Director of the Ohio Department of Development revokes certification of the zone, or the City of Avon revokes the designation of the zone, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the ENTERPRISE and/or the EMPLOYER materially fail to fulfill their obligation under the Agreement and the City of Avon, Ohio terminates or modifies the exemptions from taxation granted under this Agreement.

12. If the ENTERPRISE and/or the EMPLOYER fail to fulfill their obligations under the terms of this Enterprise Zone Agreement, e.g., by moving, selling any or all of its business, relocating any portion of its operation, relocating any of its jobs, ceasing operation or otherwise failing to preserve employment opportunities within the CITY as contemplated by this Enterprise Zone, then in that event, the ENTERPRISE shall forthwith repay any and all tax benefits received during the contract exemption periods. The CITY may record a Certificate of Non-Compliance with the Office of the Lorain County Recorder which shall serve, in addition to other remedies which may be available at law or in equity, as a lien or charge against the affected real property until repayment of taxes has been made in full.

13. If The ENTERPRISE and/or the EMPLOYER materially fail to fulfill their obligations 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 payable had the property not been exempted from taxation under this Agreement.

14. The ENTERPRISE hereby certifies that at the time this Agreement is executed, the ENTERPRISE 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 ENTERPRISE is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747 or 5753, of the Ohio Revised Code, or, if such delinquent taxes are owed, the ENTERPRISE 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 the ENTERPRISE. For the purposes of 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.

15. The ENTERPRISE affirmatively covenants that 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 a

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.

16. The ENTERPRISE and the CITY acknowledge that this Agreement must be approved by formal action of the legislative authority of the City of Avon, Ohio and the County of Lorain, Ohio, as a condition for the Agreement to take effect. This Agreement takes effect upon such approval.

17. The CITY has developed a policy to ensure recipients of Enterprise Zone tax benefits practice non-discrimination in this operation. By executing this Agreement, the ENTERPRISE and the EMPLOYER commits to following non-discriminatory hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.

18. Exemptions from taxation granted under this Agreement shall be revoked if it is determined that the ENTERPRISE and/or the EMPLOYER, any successor enterprise or employer or any related members (as those terms are defined in Section 5709.61 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, 5709.63 and/or 5709.632 of the Ohio Revised Code prior to the time prescribed by that division or either of those Sections.

19. The ENTERPRISE affirmatively covenants that it has made no false statements to the State or local political subdivision in the process of obtaining approval for the Enterprise Zone incentives. If any representative of the ENTERPRISE has knowingly made a false statement to the State or local political subdivision to obtain the Enterprise Zone incentives, the ENTERPRISE shall be required to immediately return all benefits received under the Enterprise Zone 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 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more that six (6) months.

20. This Agreement is not transferable or assignable without the express, written approval of the City of Avon, Ohio.

IN WITNESS WHEREOF, the CITY, by James A. Smith, its Mayor, and pursuant to Ordinance No. 81-13, has caused this instrument to be executed this ____ day of _____, 2013. The ENTERPRISE by _____, has caused this instrument to be executed on this ____ day of _____, 2013. The EMPLOYER, by _____, has caused this instrument to be executed on this ____ day of _____, 2013.

Witnesses:

THE CITY OF AVON, OHIO

James A. Smith, Mayor

**BOARD OF COUNTY COMMISSIONERS
OF LORAIN COUNTY, OHIO**

**JENNE FAMILY LIMITED PARTNERSHIP
(The "ENTERPRISE")**

Rose M. Jenne, Managing Partner

Printed Name of Authorized Representative

**JENNE, INC.
(The "EMPLOYER")**

Rose M. Jenne, CEO

Printed Name of Authorized Representative

Approved as to Form:

John A. Gasiar, Law Director
City of Avon, Ohio