

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this 9th day of ~~July~~ ^{June}, 2017, by and between the **COUNTY OF GREENSVILLE, VIRGINIA** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **ORAN SAFETY GLASS, INC.** (the "Company"), a Delaware corporation authorized to transact business in the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$150,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to improve, equip and operate a manufacturing facility in the Locality (the "Facility"), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality and the Company desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of the Company regarding Capital Investment and New Jobs, and the repayment by the Company of all or part of the COF Grant under certain circumstances;

WHEREAS, the improvement, equipping and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$4,450,000 which will be invested in machinery and equipment;

WHEREAS, the improvement, equipping and operation of the Facility will further entail the creation and Maintenance of 55 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The Capital Investment must be in addition to the capital improvements at the Facility as of March 1, 2017.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the Subsequent Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$43,000. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the baseline 110 full-time jobs at the Facility, which was calculated as the Facility’s average monthly number of permanent full-time employees over the immediately preceding twelve (12) month period ending March 1, 2017. New Jobs as of the Initial Performance Date and Subsequent Performance Date shall be calculated as the Facility’s average monthly number of permanent full-time employees, meeting the wage and benefit criteria described above, over the immediately preceding twelve (12) month period.

“Initial Performance Date” means December 31, 2021. If the Locality, in consultation with VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may request an extension of the Initial Performance Date by up to 15 months. Any extension of the Initial Performance Date shall require the prior approval of the Board of Directors of VEDP. If the Initial Performance Date is extended, the Locality shall send written notice of the extension to the Company and VEDP and the date to which the Initial Performance Date has been extended shall be the “Initial Performance Date” for the purposes of this Agreement.

“Standby Letter of Credit” or “SLOC” means the irrevocable standby letter of credit in the total amount of \$150,000 in form, scope, and substance satisfactory to VEDP and the Locality. Such SLOC shall remain in full force and effect at all times from its date of issuance until verification of the achievement of the Targets as of the Subsequent Performance Date set forth in this Agreement and the fulfillment of any repayment obligations as may be required by this Agreement. Upon the issuance of satisfaction letters from VEDP and the Locality, the

SLOC may be terminated. The SLOC shall be issued by a major domestic bank, approved by VEDP and the Locality. The SLOC shall provide that it can be called on and paid at a branch or office of the issuing bank and that it is payable on written demand (allowing, however, up to one business day after receipt of such demand for the issuing bank to verify the signature appearing on such demand) signed by an agent of the Locality with a certification that repayment obligations required by this Agreement are unsatisfied in whole or in part and that certain amounts are due. Any renewal, replacement, or amendment of the SLOC must be acceptable in form, scope and substance to VEDP and the Locality.

“Subsequent Performance Date” means December 31, 2023, unless the Initial Performance Date has been extended. If the Initial Performance Date has been extended, the Subsequent Performance shall be 2 years after the new Initial Performance Date. Except as so noted, the Subsequent Performance Date is not subject to extension. If the Subsequent Performance Date is extended, the expiration date of the SLOC will be extended to no earlier than 90 days after the Subsequent Performance Date.

“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least \$4,450,000 and to create and Maintain at least 55 New Jobs at the Facility, all as of the Initial Performance Date. Further, “Targets” includes the Company’s obligation to Maintain at least 55 New Jobs at the Facility as of the Subsequent Performance Date.

“Virginia Code” means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will improve, equip and operate the Facility in the Locality, make a Capital Investment of at least \$4,450,000, and create and Maintain at least 55 New Jobs at the Facility, all as of the Initial Performance Date. Further, the Company will Maintain at least 55 New Jobs at the Facility as of the Subsequent Performance Date.

(b) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The Locality hereby strongly encourages the Company to ensure that at least 30% of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(c) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$43,000 is more than the prevailing average annual wage in the Locality of \$37,281. The Locality is a high-unemployment locality, with an unemployment rate for 2015, which is the last year for which such data is available, of 5.4% as compared to the 2015 statewide unemployment rate of 4.4%. The Locality is a high-poverty locality, with a poverty rate for 2015, which is the last year for which such data is available, of 27.9% as compared to the 2015 statewide poverty rate of 11.2%.

(d) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company acknowledges that within 18 months of the date of this Performance Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company's application for the COF Grant through the one-year period immediately after the date of this Agreement.

Section 3. Disbursement of COF Grant.

(a) *Disbursement of the COF Grant:* As security for the performance of the Company's obligations under this Agreement, a Standby Letter of Credit will be provided. Such Standby Letter of Credit shall be delivered to the Locality no later than 30 days after the date of this Agreement.

By no later than July 31, 2017, the Locality will request the disbursement to it of the COF Grant, but only after the Standby Letter of Credit has been delivered to the Locality. If not so requested by the Locality by July 31, 2017, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a COF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The COF Grant in the amount of \$150,000 will be paid to the Locality, upon its request. Within 30 days its receipt of the COF Grant proceeds, the Locality will disburse the COF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility.

(b) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to offset the cost of the acquisition of the site of the existing Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its "break-even point" by the Subsequent Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$150,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	55,000

Tobacco Region Opportunity Fund Grant (“TROF”)	235,000
Enterprise Zone Job Creation Grant (“EZJCG”) (Estimated)	148,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(b). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The proceeds of the TROF Grant shall be used by the Company for any lawful purpose. The proceeds of the EZJCG may be used by the Company for any lawful purpose.

(b) *Locality-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Tax Relief, Through Initial Performance Date	\$85,000

The Locality has chosen to allocate \$75,000 of the TROF to its obligation to provide a \$150,000 local match for the COF Grant. If, by the Initial Performance Date, the proceeds disbursed or committed to be disbursed by the Locality to the Company under the tax relief total less than the remaining \$75,000 COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Initial Performance Date, so long as the Company has met its Targets as of the Initial Performance Date.

The Locality’s tax relief will reflect cost savings to the Company.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$1,500,000 in the Facility and create and Maintain at least 15 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Initial Performance Date shall constitute a breach of this Agreement and the entire COF Grant must be repaid by the Company to the Locality.

(b) *Allocation of COF Proceeds:* For purposes of repayment under subsections (c) and (d), the COF Grant is to be allocated as 50% (\$75,000) for the Company’s Capital Investment Target, and 50% (\$75,000) for the Company’s New Jobs Target.

(c) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (c) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). Except as noted in subsection (d) below, if the Company has met at least 90% of both of the Targets at the Initial Performance Date, then and thereafter the Company is no longer obligated to repay any portion the COF Grant. If the Company has not met at least 90% of either or both of its Targets at the Initial Performance Date, the Company shall repay to the Locality that part of the COF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Initial Performance

Date, the Capital Investment is only \$1,750,000 (reflecting achievement of 50% of the Capital Investment Target) and only 30 New Jobs have been created and Maintained (reflecting achievement of 54% of the New Jobs Target), the Company shall repay to the Locality 50% of the moneys allocated to the Capital Investment Target (\$37,500) and 46% of the moneys allocated to the New Jobs Target (\$34,500).

(d) *Further Performance Target for the Maintenance of the New Jobs:* If the Company had no repayment obligation under subsection (a) above or under subsection (c) above as to the New Jobs Target, the Company may still have a repayment obligation if it has not Maintained the New Jobs from the Initial Performance Date through the Subsequent Performance Date. If the Company has received all of the proceeds of the COF Grant, but has not Maintained at least 50 New Jobs (90% of 55 New Jobs) through the Subsequent Performance Date, the Company shall repay to the Locality that part of COF Grant that is proportional to the shortfall from the 55 New Jobs. For example, if at the Subsequent Performance Date, only 23 New Jobs have been Maintained (reflecting achievement of 42% of the New Jobs Target), the Company shall repay to the Locality 58% of the moneys allocated and disbursed related to New Jobs (\$43,500).

(e) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Initial Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Initial Performance Date, and if the Locality or VEDP shall have promptly notified the Company of such determination, the Company must repay to the Locality all of the COF Grant proceeds previously disbursed to the Company. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates the Company will be unable or is unwilling to satisfy the Targets for the COF Grant by and through the Initial Performance Date.

A Determination Date will also be deemed to have occurred, and the Company must repay to the Locality all of the COF Grant proceeds previously disbursed to the Company, if the Locality receives notification from the issuing financial institution indicating that the Standby Letter of Credit will not be renewed. If the Locality receives such a notification, the Locality will immediately draw upon the Standby Letter for the full \$150,000 amount of the COF Grant and will pay to VEDP the amount received, for redeposit to the Commonwealth's Development Opportunity Fund. Such amount will be credited to the Company's obligation to repay to the Locality all of the COF Grant proceeds previously disbursed to the Company.

A Determination Date will also be deemed to have occurred, and the Company must repay to the Locality all of the COF Grant proceeds previously disbursed to the Company, if the Standby Letter Credit has expired and not been renewed, has been withdrawn by the issuing financial institution or has otherwise become unavailable to be drawn upon prior to the 90th day after Subsequent Performance Date. In the event that the Standby Letter of Credit ceases to be in full force and effect and the Standby Letter of Credit has not been drawn upon for repayment of the full COF Grant, the Company will repay to the Locality all of the COF Grant proceeds

previously disbursed to the Company. The Locality will repay such amount to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

(f) *Repayment Dates: Such repayment shall be due from the Company to the Locality within ninety days of the Initial Performance Date, the Subsequent Performance Date or the Determination Date, as applicable.* Any moneys repaid by the Company to the Locality hereunder shall be repaid by the Locality promptly to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. The Locality shall use its best efforts to recover such funds, including legal action for breach of this Agreement. Except for funds received from a draw on the Standby Letter of Credit, the Locality shall have no responsibility for the repayment of any sums payable by the Company hereunder unless said sums have been received by the Locality from the Company.

The Locality shall draw on the Standby Letter of Credit for any amount due from the Company under this Agreement, but unpaid by the applicable due date. Such amount will be paid by the Locality to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. The Company will have no interest in or claim upon the funds paid under the Standby Letter of Credit.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at April 1, 2018 and covering the period through the prior December 31. Further, the Company shall provide such progress reports at such other times as the Locality or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax or, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a pass-through entity. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue, or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality or VEDP may request.

If requested by VEDP, the Company shall provide to VEDP copies of the Company's quarterly filings with the Virginia Employment Commission covering the period from the date of this Agreement through the Subsequent Performance Date.

Section 7. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

Oran Safety Glass, Inc.
48 Industrial Park Way
Emporia, Virginia 23847
Facsimile: 434-336-1621
Email: lmitchener@osg-armor.com
Attention: Louis Mitchener

with a copy to:

Gentry Locke Attorneys
801 Main Street, 11th Floor
P.O. Box 6218
Lynchburg, Virginia 24505
Facsimile: 540-983-9400
Email: keller@gentrylock.com
Attention: Herschel V. Keller, Esquire

if to the Locality, to:

County of Greensville, Virginia
1781 Greensville County Circle
Emporia, VA 23847
Facsimile: 434.348.4113
Email: dwhittington@greensvillecountyva.gov
Attention: County Administrator

with a copy to:

County of Greensville, Virginia
1781 Greensville County Circle
Emporia, VA 23847
Facsimile: 434.348.4113
Email: russelloslayton@gmail.com
Attention: County Attorney

if to VEDP, to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611

Email: smoret@yesvirginia.org
Attention: President and CEO

Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement between the parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto and consented to by VEDP. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Attorney's Fees:* Attorney's fees shall be paid by the party incurring such fees.


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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

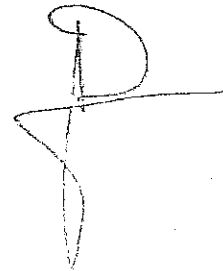
COUNTY OF GREENSVILLE,
VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

ORAN SAFETY GLASS, INC.

By 
Name: Louis Mitchener
Title: Senior Vice President, North
America Division
Date: 6-7-17

and



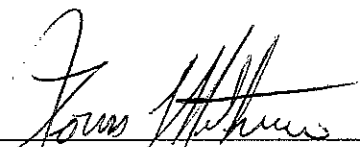
By _____
Name: Daniel Cohen
Title: CEO
Date: 06/08/2017

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

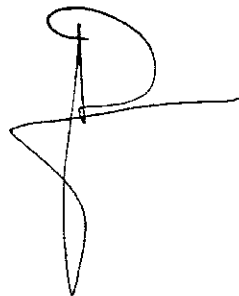
**COUNTY OF GREENSVILLE,
VIRGINIA**

By _____
Name: _____
Title: _____
Date: _____

ORAN SAFETY GLASS, INC.

By  _____
Name: Louis Mitchener
Title: Senior Vice President, North
America Division
Date: 6-9-17


and



By _____
Name: Daniel Cohen
Title: CEO
Date: 06/08/2017

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

COUNTY OF GREENSVILLE,
VIRGINIA

By 
Name: K. David Coltrane
Title: County Administrator
Date: 6/12/17

ORAN SAFETY GLASS, INC.

By _____
Name: Louis Mitchener
Title: Senior Vice President, North
America Division
Date: _____

and

By _____
Name: _____
Title: _____
Date: _____