

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "Agreement") is made and entered into this ____ day of June 2017, by and between the **COUNTY OF GREENSVILLE, VIRGINIA** (the "County") a political subdivision of the Commonwealth of Virginia, the **INDUSTRIAL DEVELOPMENT AUTHORITY OF GREENSVILLE COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia and a body politic and corporate (the "IDA"), and **ORAN SAFETY GLASS, INC.** (the "Company"), a Delaware corporation. The County, IDA, and the Company may be referred to singularly as a "party" and collectively as the "parties."

WITNESSETH:

WHEREAS, the County desires to facilitate private capital investment and private job creation in the County through ongoing economic development programs, including the development of targeted economic development incentive packages;

WHEREAS, the Company has expressed a desire to expand its existing manufacturing facility to construct a new facility consisting of approximately 77,280 square feet (the "New Facility") located in the County;

WHEREAS, the Company will make a significant Capital Investment and create and maintain a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, to induce and support new private capital investment and new private job creation within the County, the County is authorized to enter into performance based contracts incorporating economic development incentive packages;

WHEREAS, the County desires to transfer certain real property identified as map number 21-98N1 and consisting of approximately 5.034 acres and improvements currently leased by the Company which consist of the existing manufacturing facility as more particularly described on **Exhibit A** attached hereto (the "Property") to the Company and the Company intends to make the Capital Investment and to create and maintain the New Jobs upon the terms and conditions in this Agreement;

WHEREAS, the IDA will construct the New Facility and enter into a long-term lease of the New Facility to the Company;

WHEREAS, the County and the Company desire to set forth their understanding and agreement as to the transfer of the Property, construction of the New Facility, the obligations of the Company regarding Capital Investment and New Jobs, and the repayment by the Company of all or a part of certain Grants under certain circumstances;

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 hereto hereby covenant and agree as follows:

Section 1. Recitals. The recitals stated above shall be part of this Agreement.

Section 2. 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, construction, improvements, or taxable tangible personal property, at the existing manufacturing facility and the New Facility in the total amount of \$4,450,000 which is anticipated to be invested in machinery and equipment. The purchase or lease of taxable furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and improvements by or on behalf of the Company will qualify as Capital Investment.

“Closing” has the meaning provided in Section 4 of this Agreement.

“COF Grant” means a financial grant to the County from the Commonwealth Opportunity Fund in the amount of \$150,000 as memorialized in a performance agreement by and between the Company and the County.

“Company” means Oran Safety Glass, Inc.

“County” means the County of Greensville, Virginia.

“EIGs” have the meaning provided in Section 8 of this Agreement.

“Event of Default” has the meaning provided in Section 7 of this Agreement.

“Existing Jobs” means (i) for purposes of the COF Grant performance agreement, 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; and (ii) for purposes of the TROF Grant performance agreement, those employees employed at the Facility and paid during the calendar quarter ending on March 31, 2017.

“Tobacco Region Revitalization Commission” or “TRRC” means the public body created by the Virginia General Assembly.

“TROF Grant” means a financial grant to the County from the Tobacco Region Opportunity Fund in the amount of \$235,000 as memorialized in a performance agreement by and among the Company, County, and the TRRC.

“TROF Loan” means a loan to the County from the Tobacco Region Opportunity Fund in the amount of \$117,500 as set forth in a loan agreement by and among the Company, the County and the TRRC.

“New Facility” has the meaning provided in the above recitals.

“New Jobs” means a minimum of fifty-five (55) new full-time employees maintained at the existing facility and the New Facility for which the standard fringe benefits are provided by the Company for each employee, and for which the Company pays an average annual wage of at least \$43,000. For purposes of the COF Grant performance agreement, New Jobs shall 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 and New Jobs as of the performance dates 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. For purposes of the TROF Grant performance agreement, New Jobs shall be in addition to those employees at the Facility and paid during the calendar quarter ending on March 31, 2017.

“Project Schedule” means the schedule set forth on Exhibit B attached hereto.

“Property” means the real property described on Exhibit A attached hereto.

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

Section 3. Construction of New Facility.

(a) **Construction.** As soon as practicable, the County will construct the New Facility in accordance with mutually agreed upon specifications, drawings, and site plans described on Exhibit C attached hereto.

(b) **Permits, Approvals, and Variances.** The County shall have the responsibility, at its cost and expense, to obtain all permits, approvals, and variances required or necessary to construct the New Facility.

(c) **Payment.** The County shall obtain a loan for \$3,700,000 to fund a portion of the \$3,900,000 contract cost to construct the New Facility. At Closing, the Company shall pay to the County \$200,000 as the balance due to fully fund the total \$3,900,000 construction contract cost of the New Facility. The construction contract price of the New Facility is \$3,900,000, and any construction costs or changes in excess of that amount must have the mutual approval of the County and the Company before such costs or changes are incurred.

(d) **Changes.** Any changes to specifications, drawings, and site plans after the commencement of construction shall require the mutual approval of the County and the Company. The construction company’s project manager shall remain in regular communication with the County and the Company.

(e) **Project Schedule.** The County and the Company have set forth a Project Schedule in Exhibit B based on the information available at the date of this Agreement. The Project Schedule outlines the anticipated completion of the work contemplated by this Section. The County shall diligently pursue and continue the work contemplated in this Section. In the event that the County suspends or terminates any of its work required under this Agreement for a

period exceeding sixty (60) days, the County shall give the Company written notice of such suspension. The County shall advise the Company why the County suspended the work and when the County expects work to resume. In the event the County suspends work and then recommences such work, the County shall give the Company written notice that the County has recommenced work and the anticipated completion date and adjustments to the Project Schedule. In the event that the anticipated completion of construction and delivery of the New Facility is delayed by more than three (3) months, and such delay is not a result of actions or inactions of the Company, the Company shall have the right to demand that the County take all necessary steps to expedite the completion of construction.

(f) **Lease of Facility.** Contemporaneous with the conveyance contemplated in Section 4, the IDA shall lease the New Facility to the Company, for a term of not less than twenty (20) years commencing after the completion of construction of the New Facility, in accordance with the form of lease agreement attached hereto as **Exhibit D.**

Section 4. Transfer of Property.

(a) **Conveyance.** As soon as practicable on a date mutually agreeable to the County and the Company (the "Closing"), the County or the IDA shall convey the Property to the Company in fee simple, subject only to those restrictions, reservations, conditions, covenants and easements lawfully of record, by special warranty deed, in a form reasonably acceptable to the parties. The purchase price for the Property shall be the remaining balance of the IDA's debt obligations with respect to the Property.

(b) **Conditions Precedent.** The County's obligation to convey and the Company's obligation to purchase the Property shall be subject to the following:

- i. Company's receipt of the COF Grant and the TROF Grant; and
- ii. The IDA's execution of a contract for the construction of the New Facility.

(c) **Conveyance Costs.**

i. At Closing, the County shall pay the cost of the grantor's tax on the deed, the payment and cost of preparation of the deed and other conveyancing instruments, and its own legal fees.

ii. At Closing, the Company shall pay the cost of all recording taxes and fees imposed on recordation of the deed (except for the grantor's tax), title insurance premiums, and search fees and other charges related to Company's due diligence and legal fees.

iii. At Closing, the Company shall pay to the County a prorated portion of the 2017 PILOT fee attributable to the real property upon which the New Facility will be constructed.

(d) **Representation of County.** The County represents to the Company that the zoning designation of the Property at the time of the conveyance will allow the Property to be used for the business contemplated by the Company.

Section 5. Capital Investment. The Company agrees to make or cause to be made the Capital Investment by the deadlines imposed by the COF Grant performance agreement and the TROF Grant performance agreement. The Company shall provide the County and the Commissioner of the Revenue with evidence of the machinery, improvement and equipment costs and expenses, upon request by the County and in a form acceptable to the County. The final determination of the value of the taxable assets shall be made by the Commissioner of the Revenue.

Section 6. New Jobs. The Company agrees to create and maintain the New Jobs by the deadlines imposed by the COF Grant performance agreement and the TROF Grant performance agreement. The New Jobs shall be verified through the Company's required Virginia Employment Commission quarterly reports and provided to the County upon request.

Section 7. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement:

(a) Failure by the Company to meet the Capital Investment requirement as specified in the COF Grant performance agreement or the TROF Grant performance agreement;

(b) Failure by the Company to create and maintain the New Jobs as specified in the COF Grant performance agreement or the TROF Grant performance agreement; or

(c) The Company or the County shall breach or fail to perform any term, covenant, or agreement herein and such default shall continue for thirty (30) days after written notice thereof has been given to the defaulting party.

Section 8. Grants and Loans.

(a) **COF Grant and TROF Grant.** The parties acknowledge that the COF Grant and the TROF Grant shall be memorialized in one or more performance agreements among the County and the Company and the applicable state agencies. As of the date of this Agreement, the Company intends to use the proceeds of the COF Grant and the TROF Grant towards the acquisition of the Property and purchase of equipment.

(b) **TROF Loan.** The parties acknowledge that the TROF Loan shall be memorialized in a loan agreement by and among the County, the Company and the TRRC. The Company shall comply with all obligations required by such loan agreement.

(c) **Letter of Credit.** Prior to the disbursement of any amounts under the COF Grant, TROF Grant, or TROF Loan, the Company shall provide an irrevocable standby letter of credit in the total amount of the COF Grant, TROF Grant and TROF Loan, in form, scope, and substance satisfactory to the County. Such irrevocable standby letter of credit shall

remain in full force and effect at all times from its date of issuance until verification of the achievement of the Capital Investment and New Jobs have been fulfilled. The irrevocable standby letter of credit 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 County with a certification that repayment obligations required by this Agreement are unsatisfied in whole or in part and that certain amounts are due.

(d) **Economic Incentive Grants** (“EIGs”).

i. The Company shall be entitled to payments of ten (10) annual EIGs from the County, each of which shall be for fifty-percent (50%) of the increase in the machinery and tools tax paid by the Company over such tax paid in 2016. Once the Company has paid the machinery and tools tax due for the current tax year, the Company shall provide County and IDA with proof of such payment. Within thirty (30) days of the County’s receipt of proof of payment, the County shall have a moral obligation, which shall not constitute a legally enforceable obligation, to appropriate fifty-percent (50%) of the amount of machinery and tools tax so paid by the Company and remit that amount to IDA. Within thirty (30) days from the receipt of such funds from County, IDA shall remit to Company an EIG payment equal to the amount of the payment made to IDA by County. Company shall not be entitled to an EIG until after the Company has paid in full the machinery and tools tax due from the Company for the applicable year. If Company makes late payment of any annual machinery and tools tax, the EIG paid to Company shall not include the amount of any interest, penalty or other lawful charge imposed as a result of Company’s late payment. Company shall be entitled to a maximum of ten (10) annual EIGs.

ii. Company shall be entitled to payments of ten (10) annual EIGs from the County, each of which shall equal twenty-five percent (25%) of the real property tax assessed on the existing manufacturing facility conveyed to the Company. Once Company has paid the real property tax due for the current tax year, the Company shall provide County and IDA with proof of such payment. Within thirty (30) days of the County’s receipt proof of payment, The County shall have a moral obligation, which shall not constitute a legally enforceable obligation, to appropriate twenty-five percent (25%) of the amount of real property tax so paid by the Company and remit that amount to IDA. Within thirty (30) days from the receipt of such funds from County, IDA shall remit to Company an EIG payment equal to the amount of the payment made to IDA by County. Company shall not be entitled to an EIG until after the Company has paid in full the real property tax due. If Company makes late payment of any annual real property tax, the EIG paid to the Company shall not include the amount of any interest, penalty or other lawful charge imposed as a result of Company’s late payment. Company shall be entitled to a maximum of ten (10) annual EIGs for real property tax, each of which shall equal twenty-five percent (25%) of the real property tax assessed on the existing manufacturing facility and paid by Company for a given calendar year.

iii. Company shall be entitled to payment of ten (10) annual EIGs from the County, each of which shall equal fifty percent (50%) of the PILOT fees on the New Facility. Within thirty (30) days after the Company’s final rent payment to the IDA for an

applicable year, the County shall have a moral obligation, which shall not constitute a legally enforceable obligation, to appropriate fifty percent (50%) of the amount of PILOT fee so paid by the Company and remit that amount to IDA. Within thirty (30) days from the receipt of such funds from County, IDA shall remit to Company an EIG payment equal to the amount of the payment made to IDA by County. Company shall not be entitled to an EIG until after the Company has paid all rent payments for the applicable year. If Company makes late payment of any rent payment, the EIG paid to the Company shall not include the amount of any interest, penalty or other lawful charge imposed as a result of Company's late payment. Company shall be entitled to a maximum of ten (10) annual EIGs for PILOT fees, each of which shall equal fifty percent (50%) of the PILOT fees paid by Company for a given calendar year.

Section 9. Remedies.

(a) If the Company shall fail to achieve the Capital Investment or New Jobs requirements as specified in the COF Grant performance agreement and the TROF Grant performance agreement, the Company shall repay to the County, within thirty (30) days of the County's demand, the portion of the grant proceeds as specified in the COF Grant performance agreement and the TROF Grant performance agreement.

(b) Subject to either party's right to cure any default as provided in this Agreement, any default under the COF Grant performance agreement or the TROF Grant performance agreement shall constitute a default by the Company of its obligations to the County and shall entitle the County to call upon the irrevocable standby letter of credit for payment.

(c) Upon the occurrence of any other Event of Default, the County or Company, as may be applicable, after the other party has had a reasonable opportunity to cure and with thirty (30) days prior notice to the other party, take any of the following actions, at the same or different times: (i) terminate this Agreement and with it all future, but not past, obligations of the parties hereunder; or (ii) exercise any other rights or remedies under this Agreement or provided by applicable law.

(d) The County agrees that the repayment obligations set forth in this Section constitute the sole remedy of the County for any matters that arise from or are related to Company's performance of this Agreement, including, without limitation, the failure of Company to meet the Capital Investment and New Jobs obligations set forth herein, and the County waives any other claim, cause of action, or remedy that it might assert against Company with respect to such matters.

Section 10. Compliance with the Laws. The County and the Company agree to comply with all applicable federal, state, and local laws, rules, and regulations.

Section 11. Confidentiality. The Company shall provide, at the Company's expense, detailed verification of the Company's progress towards the requirements in this Agreement, at such times reasonably required by the County. The County acknowledges and represents to the Company that it considers such information submitted by the Company under this Agreement to be confidential proprietary information and will defend against release of this information under the Virginia Freedom of Information Act on the grounds that this information is confidential

proprietary information and that such information will be used by County solely in calculating aggregate return on invested capital for purposes of gauging the overall effectiveness of economic development incentives. Company acknowledges that County may provide such information pursuant to a lawful effort by a requestor to secure the information under the Virginia Freedom of Information Act and the County shall immediately notify the Company of such release of information.

Section 12. Miscellaneous.

(a) **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, 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 County, to:

County of Greensville, Virginia
1781 Greensville County Circle
Emporia, Virginia 23847
Facsimile: (434) 348-4113
Email: dwhittington@greensvillecountyva.gov
Attention: County Administrator

with a copy to:

County Attorney
Slayton & Clary
PO Box 580
411 South Hicks Street
Lawrenceville, Virginia 23868
Facsimile: (434) 848-3808
Email: russelloslatyon@gmail.com
Attention: Russell O. Slayton, Jr., Esq.

if to the Company, to:

with a copy to:

Oran Safety Glass, Inc.
48 Industrial Park Way
Emporia, Virginia 23847

Facsimile: (434) 336-1621
Email: lmitchener@osg-armor.com
Attention: Louis Mitchener

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

(b) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties hereto regarding the subject matter contained herein and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No party hereto may assign any of its rights or obligations without the prior written consent of the other party.

(c) **Force Majeure.** In no event will either party be liable for any delay in the performance of, or failure to perform, any action required under this Agreement, whether in whole or in part, and the time for performance (including, without limitation and for avoidance of doubt, the investment and job maintenance obligations set forth herein) will be extended for the duration of any such delay, to the extent that such delay or failure is caused by any of the following causes: war; acts of terrorism; strike, lockout or other labor disturbance; fire; severe weather; extraordinary natural occurrence; epidemic; earthquake; shortage or interruption of supply or transportation facilities; action of the County; extraordinary governmental action (whether or not valid); or other causes, whether or not similar, beyond the reasonable control of either party, in each case whether foreseeable or unforeseeable.

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

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

(f) **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.


(g) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or electronic mail transmission shall constitute effective execution and delivery of this

Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic mail shall be deemed to be their original signatures for all purposes.

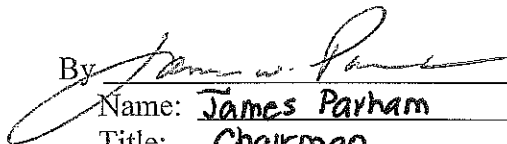
[signature page follows]

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

**COUNTY OF GREENSVILLE,
VIRGINIA**

By 
Name: K. DAVID WRIGHT
Title: County Administrator
Date: 6/12/17

**GREENSVILLE COUNTY
INDUSTRIAL DEVELOPMENT
AUTHORITY**

By 
Name: James Parham
Title: Chairman
Date: June 13, 2017

ORAN SAFETY GLASS, INC.

By _____
Name: _____
Title: _____
Date: _____

and

By _____
Name: _____
Title: _____
Date: _____

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

**COUNTY OF GREENSVILLE,
VIRGINIA**

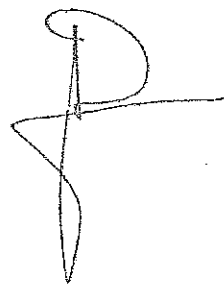
By _____
Name: _____
Title: _____
Date: _____

**GREENSVILLE COUNTY
INDUSTRIAL DEVELOPMENT
AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

ORAN SAFETY GLASS, INC.

By _____
Name: DANIEL COHEN
Title: CEO
Date: 06/09/2017



and

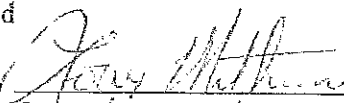
By 
Name: LOUIS MITCHENER
Title: SR VI NORTHAMERICA DIVISION
Date: 6-9-2017

EXHIBIT A

PROPERTY

Map PIN: 21-98N1

GPIN: 7473-41-5138

That portion of the attached plat which includes the property, consisting of approximately 5.034 acres upon which the existing manufacturing facility is located and currently leased by the Company, together with all appurtenances and improvements, less and except the remainder of the 10.237 acres. Said description to be more particularly described in the special warranty deed.

EXHIBIT B

PROJECT SCHEDULE

Task	Anticipated Completion Date	Responsibility
Approval of Performance Agreement	June 12, 2017	County and Company
Approval of Lease Agreement	June 12, 2017	County and Company
Approval of Construction Contract for New Facility	June 12, 2017	IDA
Approval of TROF Grant agreement	June 12, 2017	County, Company, and TRRC
Approval of TROF Loan agreement	June 12, 2017	County, Company, and TRRC
Approval of COF Grant agreement	June 12, 2017	County and Company
County's Notice to VRA to participate in funding	June 21, 2017	County
Availability of funds from Virginia Resources Authority	August 16, 2017	County
Commencement of Construction (Notice to proceed provided to contractor)	August 16, 2017	County
Substantial Completion	May 9, 2018	County
Shell Certificate of Occupancy	May 9, 2018	County

EXHIBIT C

CONSTRUCTION SPECIFICATIONS AND DRAWINGS

[see attached]

EXHIBIT D

FORM OF LEASE AGREEMENT

[see attached]