

## AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT for Purchase and Sale of Real Estate made and entered into this 21<sup>st</sup> day of February, 2023, by and between the Midwest City Utilities Authority, an Oklahoma public trust (the "Seller"), and American Glass, Inc., an Oklahoma corporation, or permitted assigns (the "Buyer"), is made with reference to the following facts:

- (i) Seller owns certain real property located in Oklahoma County, Oklahoma, containing approximately 11.73 gross acres of vacant land, as more particularly described on Exhibit "A," attached hereto and made a part hereof.
- (ii) Seller desires to sell and Buyer desires to purchase such real property, all improvements thereon and appurtenances thereunto belonging ("Property"), in accordance with the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other fair and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**1. Purchase and Sale.** Seller agrees to sell, and Buyer agrees to purchase, the Property for the consideration and on the terms hereinafter provided, free and clear of all mortgages, security interests, liens, encumbrances and charges whatsoever.

**2. Purchase Price.** The purchase price for the Property shall be Three Hundred Six Thousand Five Hundred Forty Dollars and No Cents (\$306,540.00), payable as follows:

**2.1. Earnest Money.** The sum of Fifty Thousand Dollars (\$50,000.00) (the "Earnest Money") shall be delivered to Chicago Title Oklahoma, Attn: Dawn Brooks, 210 Park Avenue, Suite 210 Oklahoma City, Oklahoma 73102; (405) 810-2400; dawnb@ctt.com (the "Escrow Agent"), within Two (2) business days of the execution of this Agreement by both parties, and shall be held by said Escrow Agent under the terms and conditions of this Agreement, to be applied to the Purchase Price payable at Closing. The Escrow Agent may place said Earnest Money in an interest bearing account, and the party to whom said Earnest Money is ultimately delivered shall receive any such interest earned.

**2.2. Cash.** The sum of Two Hundred Fifty-Six Thousand Five Hundred Forty Dollars and No Cents (\$256,540.00) shall be paid by Buyer to Seller by bank cashier's or certified check or wire transfer, at Closing.

**3. Closing.** The consummation of the transaction and the delivery of the documents referred to herein shall occur at the "Closing". The Closing shall take place within thirty (30) days after (a) the Property has been rezoned for Buyer's Intended Use as set forth in Section 8.8 below, or the expiration of the Access and Feasibility Study Period, whichever

is later. The Closing shall take place at the office of the Escrow Agent or by mail-away closing.

**4. Title Material.** Seller shall obtain and furnish to Buyer a commitment for title insurance from Chicago Title Insurance Company on said Property showing a merchantable title in the Seller, according to the standards adopted by the Oklahoma Bar Association, free and clear of all liens and encumbrances except those shown herein. The Buyer shall have fourteen (14) days to have the commitment examined and furnish any objections in writing to the Seller, and the Seller shall have not to exceed sixty (60) days from the notice thereof to correct such defects, unless such time is further extended by mutual agreement in writing. If Seller is unable to cure or elects not to cure any of Buyer's objections, Buyer may elect to either (a) accept title as it is and proceed to Closing without a reduction in the Purchase Price, or (b) terminate this Agreement and its Earnest Money and any interest shall be returned and the parties shall have no further obligations to each other. Said commitment is to be delivered to the attorney for Buyer for examination.

**5. Representations and Warranties.**

**5.1. Seller's Representations and Warranties.** Seller represents and warrants to Buyer as follows:

(a) **Condemnation.** Seller has no knowledge and has not received any written notice that the Property, or any part thereof, is or will be the subject of or affected by any condemnation, eminent domain, or similar proceeding.

(b) **Litigation.** To Seller's knowledge, there is no existing or threatened action, suit or proceeding affecting the Property, or any part thereof, or relating to or arising out of the ownership and use of the Property or any part thereof, in any Court or before or by any Federal, State, County or Municipal department, commission, board, bureau, agency or governmental instrumentality.

(c) **Legal Compliance.** To Seller's knowledge, Seller has complied with all Federal, State and local laws and administrative regulations relating to the ownership of the Property.

(d) **Options.** Seller has not granted to any person, firm or other entity a right or option to acquire the Property, or any part thereof, which has not been heretofore terminated in full.

(e) **Taxes.** All general taxes and special assessments relating to the Property due and payable with respect to calendar years prior to 2023 shall have been paid in full and discharged prior to Closing.

**5.2. Buyer's Representations and Warranties.** The Buyer represents and warrants to Seller that Buyer has the authority and power to enter into and carry out the provisions of this Agreement; and that the execution and performance of this Agreement will not conflict with or result in any breach of the terms and provisions of any instrument or agreement to which Buyer is a party.

**5.3. Survival.** The foregoing representations and warranties of Seller and Buyer shall survive the Closing for a period of one (1) year.

**6. Access and Feasibility Study.** Seller shall provide Buyer, Buyer's agents and employees, access to the Property for the purpose of conducting, at Buyer's sole cost, liability and expense, (from which Buyer shall indemnify and hold Seller harmless), feasibility, adequacy of drainage, environmental, engineering and topographic studies, including inspections, surveys, test borings, soil analyses and all other studies, tests, inspections, analyses and surveys reasonably necessary in the opinion of Buyer to establish to Buyer's satisfaction that the Property is suitable for Buyer's intended use and that utilities are reasonably available to the Property. Buyer shall also be able to review the Development Agreement, defined in Paragraph 22(c) below. All of Buyer's obligations hereunder shall be subject to such studies, tests, inspections, analyses, surveys and satisfactory review of the Development Agreement. If, within One Hundred Eighty (180) days after the execution of this Agreement ("Access and Feasibility Study Period", Buyer should determine that the Property is unsuitable or that the Development Agreement is not acceptable, Buyer may, at Buyer's option, (i) accept the condition of the Property and the Development Agreement and proceed to Closing; or, (ii) terminate this Agreement by notice in writing to Seller, in which event after the return of the Earnest Money and any interest to Buyer, neither party shall have any further obligations to the other hereunder. Upon the expiration of the Access and Feasibility Study period, if Buyer has not elected to terminate the Agreement, the Earnest Money shall become non-refundable, except in those circumstances as provided for herein.

**7. Condition of Property.** Pending Closing, Seller shall maintain the Property in the condition existing as of the date hereof, ordinary wear and tear excepted.

**8. Conditions Precedent.** The obligation of Buyer hereunder at Closing shall be subject, at Buyer's option, to the following conditions:

**8.1. Performance by Seller.** The Seller shall perform all its obligations to be performed hereunder at or prior to Closing.

**8.2. Representations and Warranties.** All representations and warranties of the Seller hereunder shall be true and correct as of Closing.

**8.3. Title.** Marketable title to the Property shall be vested in Seller in fee simple absolute, subject to no mortgage, pledge, lien, encumbrance, security interest or

charge, except such matters as shall have been approved by Buyer in writing. "Marketable title" shall be determined according to current title standards adopted by the Oklahoma Bar Association.

**8.4. Condemnation.** Neither the Property, nor any part thereof, shall have been condemned by any authority having that right and power, nor shall the Property or any part thereof be the subject of any pending or threatened eminent domain proceeding.

**8.5. Alteration.** Neither the Property, nor any part thereof, shall have been materially altered prior to Closing.

**8.6. Environmental Audit.** Seller has provided Buyer with an existing Phase I of the Property. Seller shall provide Buyer with an updated Phase I of the Property. Buyer shall have until the expiration of the Access and Feasibility Study period to notify Seller of the acceptability of such Phase I. If no notice is given to Seller by Buyer within such time, the Audit shall be deemed acceptable.

**8.7. Survey.** Seller shall obtain an ALTA survey of the Property in a form acceptable to induce survey protection under the title commitment called for herein. The cost of such ALTA survey shall be paid by Seller.

**8.8. Rezoning/PUD Amendment.** The Buyer intends to use the Property to construct a 100,000 square feet window production facility ("Intended Use"). The Property is currently zoned as PUD PC 1766, which must be amended in order to allow the Property to be used for Buyer's Intended Use. Additionally, Buyer understands that Seller has an inherent interest in the use of the Property and agrees that the PUD amendment shall also include certain prohibited uses of the Property, which Seller shall provide to Buyer to be incorporated into the PUD amendment application. Upon Escrow Agent's receipt of the Earnest Money, Seller shall provide its authorization for Buyer to commence the PUD amendment process, which may take up to One Hundred Eighty (180) days to complete. If Buyer is unable to obtain the necessary approvals to obtain an amendment to the PUD, Buyer may terminate this Agreement upon written notice to Seller and Buyer's Earnest Money shall be returned to Buyer and the parties shall have no further obligations to the other hereunder.

**9. Conditions Precedent to Seller's Obligations.** The Seller's obligations hereunder shall be subject, at its option, to the conditions that Buyer perform all Buyer's obligations to be performed hereunder at or prior to Closing and that all representations and warranties of the Buyer hereunder are true and correct as of Closing.

**10. Termination of Agreement.**

**10.1. Termination.** Either party may terminate this Agreement, at or prior to Closing, by written notice to the other party if any of the conditions precedent to that party's obligations hereunder shall have not been satisfied within the times prescribed herein.

**10.2. Return of Earnest Money and Interest to Buyer.** If this Agreement is terminated by Buyer on account of Seller's failure or inability to satisfy any condition precedent to Closing, and Buyer is unwilling to waive such condition, neither party shall have any further obligations hereunder except that Escrow Agent shall promptly refund to Buyer the Earnest Money delivered in escrow pursuant to paragraph 2.1 hereof.

**10.3. Delivery of Earnest Money and Interest to Seller.** In the event Buyer refuses or is unable to close the transaction described herein despite the satisfaction of all conditions precedent to Buyer's obligations hereunder, Escrow Agent shall deliver the Earnest Money delivered in escrow, pursuant to paragraph 2.1 hereof, to Seller as full and complete liquidated damages, and without further liability of either party to the other and, in such event, neither party shall have any further obligations hereunder.

**10.4. Specific Enforcement.** In the event that Seller refuses or is unable to close this transaction despite the satisfaction of all conditions precedent to Seller's obligations hereunder, Buyer shall be entitled, at Buyer's option, to specifically enforce the terms of this Agreement. The prevailing party shall be awarded reasonable attorney fees and costs.

**11. Transactions at Closing.** The following transactions shall take place at Closing:

**11.1. Warranty Deed.** A General Warranty Deed, in Oklahoma statutory form and describing the Property, shall be executed and delivered by Seller to Buyer.

**11.2. Documentary Stamp Taxes.** Seller shall pay all sums necessary for the purchase of Documentary Stamps required to be affixed to the Warranty Deed under Oklahoma law.

**11.3. Proration of Taxes.** All Ad Valorem Taxes accruing or assessed with respect to the Property during the calendar year 2023 shall be prorated on the basis of the calendar year 2023 between Buyer and Seller as of the date of Closing. If the amount of such general taxes cannot be ascertained at Closing, such proration shall be on the basis of taxes assessed with respect to the previous calendar year, but shall be subsequently adjusted when such determination can be made.

**11.4. Payment.** Buyer shall pay to Seller, by certified or bank cashier's check or wire transfer, all sums owed under subparagraph 2.2 hereof, and the amount held

by Escrow Agent in accordance with paragraph 2.1 hereof shall be delivered to Seller.

**12. Cooperation of Seller.** Seller shall deliver to Buyer, immediately upon Seller's execution hereof, any surveys, prior title policies, environmental reports, or soil reports, pertaining to the Property, that the Seller has in its possession.

**13. Expenses.** Except as otherwise provided herein, expenses shall be paid as follows: a) Abstracting & title commitment: Seller; b) Title policy: Buyer; c) ALTA Survey: Seller; d) Closing or escrow fee: Seller; e) Documentary Stamps: Seller; f) Mortgage Tax: Buyer; g) Loan costs: Buyer. Each party will bear and pay its own expenses and professional fees of negotiation and consummating the transactions contemplated hereby.

**14. Brokers.** Malek Massad with Skybridge Real Estate has been Seller's broker to this transaction, whose commission shall be paid by Seller pursuant to separate agreement. Bart James with JKJ Realty has been Buyer's broker to this transaction, whose commission shall be paid by Seller pursuant to separate agreement. The parties agree that there has been no other broker, finder or other intermediary involved in this transaction and each party shall indemnify the other against all loss, cost, damage or expense, including attorney fees, should any such broker, finder or intermediary make any claim against the nondefaulting party.

**15. Notices.** All notices, requests, demands, instructions, other communications called for hereunder or contemplated hereby shall be in writing and shall be deemed to have been given if sent by overnight delivery, email transmission, personally delivered in return for a receipt, or if mailed by registered or certified mail, return receipt requested, three days after the date of such mailing, to the parties at the addresses set forth below. Any party may change the address to which notices are to be given hereunder by giving notice in the manner herein provided.

**15.1. Seller.** Notices to Seller shall be addressed as follows:

Midwest City Utilities Authority  
Attn: Robert Coleman  
100 N. Midwest Boulevard  
Midwest City, OK 73110-4327  
Phone: (405) 739-1218  
Email: rcoleman@midwestcityok.org

Copy to:

Katharine C. Oakley  
3048 N. Grand Boulevard  
Oklahoma City, OK 73107

Phone: (405) 659-2045  
Email: katieoakley786@gmail.com

**15.2 Buyer.** Notices to Buyer shall be addressed as follows:

American Glass, Inc.  
Attn: Sam Godair  
4600 W 21<sup>st</sup> Street  
Tulsa, OK 74107  
Phone: (918) 583-2728  
Email: Sam.Godair@glassandmetal.com

Copy to:

Daffern Law Firm, PLLC  
Attn: Eric Daffern  
1660 E. 71<sup>st</sup> Street, Suite J  
Tulsa, OK 74136  
Phone: (918) 746-7640  
Email: eric@daffernlawfirm.com

**16. Time of the Essence.** Time shall be of the essence with respect to the performance by the parties of their respective obligations hereunder.

**17. Whole Agreement – No Oral Modifications.** This Agreement embodies all the representations, warranties and agreements of the parties hereto and may not be altered or modified except by an instrument in writing signed by the parties.

**18. Benefit of Agreement.** This Agreement shall be binding and inure to the benefits of the parties and their respective heirs, successors and assigns.

**19. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma applicable to contracts. Any legal action arising from the contract must be filed in the proper State or Federal Court located in Oklahoma County.

**20. Counterparts and Signatures.** This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same instrument. Confirmed facsimile and electronic signatures are binding.

**21. Offer Available.** The foregoing offer is made subject to acceptance in writing hereon by the Seller on or before 5:00 p.m. Central Time, the 21st day of February, 2023, and the return of an executed copy to the undersigned of this document. If not so accepted, this offer shall be deemed withdrawn and of no force and effect.

**22. Miscellaneous Provisions.** The parties agree as follows:

**(a) Formal Approval of Agreement.** Buyer acknowledges that this Agreement and the Closing contemplated hereunder are wholly contingent upon the Seller obtaining the formal approval of the Midwest City Utilities Authority in an open meeting.

**(b) Warranty Deed Restriction.** Buyer acknowledges that the Warranty Deed shall contain language that the Property shall remain on the tax rolls of Oklahoma County and the City of Midwest City in perpetuity so that the Property shall never be exempt from taxes, regardless of the status of the owner of the Property.

**(c) Economic Development Assistance Agreement.** Seller has agreed to provide Buyer with certain incentives in exchange for the timely development of the Property the terms of which shall be set forth in an Economic Development Assistance Agreement ("Development Agreement") which shall be provided to Buyer for review during the Access and Feasibility Study period. The Development Agreement shall be executed by Buyer and Seller at or prior to Closing.

**(d) 1031 Exchange.** Seller and/or Buyer agree to execute any and all documents necessary to effectuate a 1031 tax deferred exchange on the behalf of Seller and/or Buyer so long as such execution does not result in any expense to the non-participating party.

**(e) Assignment.** Buyer may not assign this Agreement without Seller's written consent.

**(f) Disclaimer of Warranties.** At time of Closing, except for the warranty of title set forth in the deed of conveyance, and as otherwise set forth herein, Seller hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of the Property including, without limitation, the water, soil and geology, and the suitability thereof and of the Property for any and all activities and uses which Buyer may elect to conduct thereon, and the existence of any environmental hazards or condition thereon (including the presence of asbestos) or compliance with all applicable laws, rules or regulations; (ii) the nature and extent of any right of way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iii) the compliance of the Property or its operation with any laws, ordinance or regulations of any governmental or other body. Buyer acknowledges that it will have an opportunity to occupy



and inspect the Property and that it will be relying solely on its own investigation of the Property and not any determinations made by or information provided or to be provided by Seller or Seller's representatives. Buyer further acknowledges that its information with respect to the Property will be obtained from a variety of sources, and Seller a) has not made, and will not make, any independent investigation or verification of such information; and b) does not make any representations as to the accuracy or completeness of any such information, and the sale of the Property as provided for herein is made on an "As Is", "Where Is" basis and "With all Faults", and Buyer expressly acknowledges that, in consideration of the agreements of Seller herein, except as otherwise specified herein, Seller makes no warranty or representation, express or implied, or arising by operation of law, including, but not limited to, any warranty of condition, habitability, merchantability, tenantability or fitness for a particular purpose, in respect of the Property. The terms and provision of this paragraph shall survive the Closing of the sale and shall not be deemed to merge into the deed and other documents delivered at such Closing.

**(g) Unlawful and Illegal Acts.** Buyer nor Seller shall engage, nor be involved in any manner, in any unethical, discriminatory, or illegal business practices or transactions with any person or entity. Nor shall Buyer engage in business with any country, entity or person that supports terrorism or with which the United States government does not approve conducting business. Without limiting the generality of the foregoing, Buyer and Seller represent and warrant that neither Buyer nor Seller, nor any person or entity who owns a direct interest in Buyer or is an officer, director, sits on advisory board, and/or serves in any official capacity of Seller, nor any of its subsidiaries, affiliates, directors, officers, agents, or employees is a terrorist, international narcotics trafficker, person engaged in the proliferation of weapons of mass destruction, or person with whom Buyer or Seller may be prohibited from doing business under laws, regulations, or executive orders administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Treasury Department. If any of the foregoing representations is no longer true at any time prior to the date of Closing, the party hereto shall immediately notify the other.

**(h) Escrow Agent.** The parties agree that the duties of the Escrow Agent are purely administrative in nature and that the Escrow Agent shall not be liable for any error of judgment, fact, or law, or any act done or omitted to be done, except for its own gross negligence or willful misconduct. In the event a dispute arises with respect to the release of the Earnest Money, the

Escrow Agent shall retain the Earnest Money until one of the following occur: (i) A written release is executed by Buyer and Seller agreeing to its disbursement; or (ii) Interpleader of legal action is filed, at which time the Earnest Money shall be deposited with the Court Clerk.

**(i) Amendments.** This Agreement may only be amended by mutual agreement of the parties in writing, signed and executed by both parties.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

"SELLER"

MIDWEST CITY UTILITIES AUTHORITY,  
an Oklahoma public trust

By: 

Name: Matthew D. Dukes II

Title: Mayor/Chairman

"BUYER"

AMERICAN GLASS, INC.

By: 

Name: Sam Godair

Title: Vice President

**RECEIPT FOR DELIVERY OF EARNEST MONEY**

The undersigned hereby acknowledges receipt, this \_\_\_\_\_ of \_\_\_\_\_, 2023, from American Glass, Inc. of the sum of Fifty Thousand Dollars (\$50,000.00), pursuant to paragraph 2.1 of the foregoing Agreement for Purchase and Sale of Real Estate. The undersigned agrees that such funds will be held and applied in strict accordance with the terms, conditions and provisions of said Agreement.

CHICAGO TITLE OKLAHOMA

By: \_\_\_\_\_  
Escrow Agent

**EXHIBIT "A"**

Lots 2A, 2B, 2C, 2D, 2E, 3A, 3B, 3C, 3D, 3E, 3F, 3G of SOLDIER CREEK INDUSTRIAL PARK, an Addition to the City of Midwest City, Oklahoma County, Oklahoma.

