

ORDINANCE NO. _____

An ordinance authorizing The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County to negotiate and accept payments in lieu of ad valorem taxes with respect to Carlex Glass America L.L.C.'s Acquisition and Operation of the Nashville Glass Plant.

WHEREAS, the Metropolitan Government of Nashville and Davidson County (the "Metropolitan Government") is vitally interested in the economic welfare of its citizens and wishes to provide the necessary leadership to enhance this area's capabilities for growth and development; and

WHEREAS, the provision of jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and

WHEREAS, pursuant to the Industrial Development Corporations Act, currently codified at Tenn. Code Ann. §§ 7-53-101 through 315 (such act, as heretofore or hereafter amended, referred to as the "Act"), the General Assembly of the State of Tennessee (the "General Assembly") has authorized the incorporation of public corporations known as "industrial development boards" in municipalities in the State of Tennessee (the "State"); and

WHEREAS, the Industrial Development Board of The Metropolitan Government of Nashville and Davidson County (the "Board") has been duly organized and incorporated in compliance with the Act; and

WHEREAS, the General Assembly has found and declared that the Board is performing a public function on behalf of the Metropolitan Government and that the Board is a public instrumentality of the Metropolitan Government; and

WHEREAS, the Supreme Court of Tennessee (the "Supreme Court") has found that the Board is an agency or instrumentality of the Metropolitan Government; and

WHEREAS, the Act expressly incorporates by reference the statement of public policy set forth in Section 3 of Chapter 209 of the Public Acts of 1955; and

WHEREAS, Chapter 209 of the Public Acts of 1955 states that the declared purpose of the Act is to do that which the State welfare demands and that which the State public policy requires to alleviate the problems of unemployment, to raise family income, to provide a means by which the citizens of the community may promote and develop industry in their area so as to obtain a balanced economic development highly essential to the welfare of the State, and to promote the development of commercial, industrial, agricultural, and

manufacturing enterprises by the several municipalities so as to be given local benefits peculiar to each and general benefits to the entire State; and

WHEREAS, the General Assembly also has declared that the purposes of the Act include maintaining and increasing employment opportunities by promoting industry, trade, and commerce by inducing manufacturing, industrial, financial, service, and commercial enterprises to locate or remain in the State; and

WHEREAS, the Supreme Court has held that the purposes of the Act include the promotion of industry and the development of trade to provide against low wages and unemployment and that such purposes are public in nature; and

WHEREAS, the Board is empowered pursuant to the Act to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish, "projects" (as defined in the Act), and to lease such projects to others; and

WHEREAS, Carlex Glass America L.L.C. ("Carlex") is planning to acquire the real and personal property comprising the "Nashville Glass Plant," located at 7200 Centennial Boulevard, Nashville, TN 37209, thereby allowing this long-term staple of the local industrial community to continue to operate; and

WHEREAS, at the time of the anticipated acquisition, the real property comprising the Nashville Glass Plant has an appraised value of fourteen million, two hundred fifty-two thousand, one hundred dollars (\$14,252,100) and the personal property located at and used in connection with the Nashville Glass Plant has an appraised value of forty-two million dollars (\$42,000,000); and

WHEREAS, Carlex intends to make significant additional capital investments and improvements to the Nashville Glass Plant, which investments and improvements will be completed in two phases, each to occur in the very near future, the first of which will be completed in 2011 ("Phase 1") and the second of which will be completed in 2012 ("Phase 2"); and

WHEREAS, Carlex anticipates making a capital investment of forty-two million dollars (\$42,000,000) in personal property, machinery, and equipment during Phase 1 of its capital investment in the Nashville Glass Plant and anticipates making a capital investment of thirty-eight million dollars (\$38,000,000) in personal property, machinery, and equipment during the Phase 2 of its capital investment in the Nashville Glass Plant, all of which will allow Carlex to achieve both its short-term and long-term vision for the facility, in making this a first-class manufacturing facility for many, many years to come; and

WHEREAS, the real and personal property currently comprising the Nashville Glass Plant and the significant additional capital investments Carlex anticipates making in the

Nashville Glass Plant in Phase 1 and Phase 2 will hereafter be referred to collectively as the "Project"; and

WHEREAS, Carlex expects its capital expenditures within the boundaries of the Metropolitan Government to provide significant continued employment (saving/retaining the 400+ of existing jobs as well as providing opportunities for at least an additional 50 full-time jobs) and other commercial opportunities for area citizens; and

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305, all properties owned by the Board are exempt from ad valorem taxation in the State of Tennessee; and

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305(b), the Metropolitan County Council (the "Council") has the power to delegate to the Board the authority to negotiate and accept from its lessees payments in lieu of ad valorem taxes, provided that such payments are in furtherance of the Board's public purposes; and

WHEREAS, the benefits to the Metropolitan Government of the location of the Project within the boundaries of the Metropolitan Government, and in exercise of its powers enumerated above, will provide an opportunity for the Board to acquire, by purchase, exchange, gift or lease, property that will be used with respect to the Project, to lease that property to Carlex, and to enter into one or more agreements with Carlex to accept payments in lieu of ad valorem taxes with respect to the property; and

WHEREAS, the Board may only negotiate and accept payments in lieu of ad valorem taxes with authorization from the Council; and

WHEREAS, it is in the interest and welfare of the citizens of the Metropolitan Government to delegate authority to the Board to negotiate and execute a payment-in-lieu-of-tax agreement with Carlex.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: That the Council of the Metropolitan Government finds that the Board's acceptance of payments in lieu of ad valorem taxes with respect to the Project is in furtherance of the Board's public purpose of maintaining and increasing employment opportunities, as set forth in Tenn. Code Ann. § 7-53-102, and the other public purposes described above.

Section 2: That the Metropolitan Government hereby delegates to the Board the authority to negotiate and accept payments in lieu of personal and real property taxes with respect to the Project for a period of up to six years, beginning on the date that the Board enters into a lease with Carlex with respect to the Project. The amount of the payments in lieu of property taxes that shall be required with respect to that six-year period shall be as follows:

- (a) Payments in lieu of real property taxes shall be forty percent (40%) of the Standard Tax during each of the first five years and one hundred percent (100%) for the sixth year;
- (b) With respect to the capital investment of personal property, machinery, and equipment during Phase 1 of Carlex's capital investment in the Project, the payments in lieu of personal property taxes shall be fifty percent (50%) of the Standard Tax during the first three years such property is subject to ad valorem taxation and one hundred percent (100%) each year thereafter;
- (c) With respect to the capital investment of personal property, machinery, and equipment during Phase 2 of Carlex's capital investment in the Project, the payments in lieu of personal property taxes shall be fifty percent (50%) of the Standard Tax during the first three years such property is subject to ad valorem taxation and one hundred percent (100%) any year thereafter;
- (d) With respect to the personal property currently located at and used in connection with the Nashville Glass Plant, the payments in lieu of personal property taxes shall be one hundred percent (100%) of the Standard Tax during each of the six years.

Section 3: That the term "Standard Tax" shall mean the amount of ad valorem real and personal property tax that Carlex would be required to pay with respect to a given tax year with respect to the real and personal property that is then subject to the payment in lieu of tax arrangement authorized hereby if Carlex owned such property. Carlex shall be permitted to challenge the assessment of any real or personal property that is then subject to the payment in lieu of tax arrangement authorized hereby in the same manner as if Carlex owned such property.

Section 4: (a) That the payment in lieu of tax arrangement authorized by this Ordinance shall apply to all real property and personal property comprising a portion of, or used at or in connection with the facilities known as the Nashville Glass Plant, located at 7200 Centennial Boulevard, Nashville, TN 37209.

(b) That the payment in lieu of tax arrangement authorized by this Ordinance shall apply to all land, easements or other property rights, buildings, improvements, fixtures, construction in progress, equipment, furniture, and other properties of any nature comprising a portion of, or used in connection with, facilities located on the property described above. Such arrangement shall apply to such facilities and such properties in their current scope and configuration and to all replacements, enhancements, additions, expansions, and improvements to such properties and facilities.

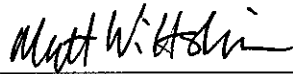
Section 5: That the final version of the payment in lieu of tax agreement authorized by this Ordinance must be approved as to legality by the Director of Law of the Metropolitan Government prior to being executed by the Board.

Section 6: That all ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 7: That this Ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

INTRODUCED BY:

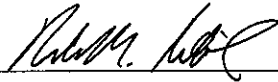


Matt Wiltshire
Director of the Mayor's Office of Economic
and Community Development



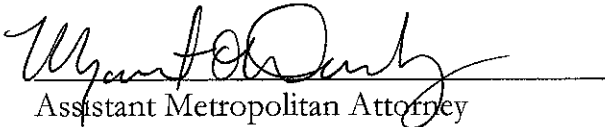
APPROVED AS TO AVAILABILITY OF FUNDS:

Council Members



Richard M. Riebeling
Director of Finance

APPROVED AS TO FORM AND LEGALITY:



Assistant Metropolitan Attorney

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