

*Hold  
TERRI J. RETHLAKE*

*Hold for Review*

0144979

**CONTRACT FOR SALE OF LAND  
FOR PRIVATE DEVELOPMENT**

RECORDED ON  
09-10-2001 4:02:02

TERRI J. RETHLAKE  
ST. JOSEPH COUNTY  
RECORDER

THIS AGREEMENT, made on September 7, 2001, between the South Bend Redevelopment Commission (the "Commission"), established under the Cities and Towns Act of 1953, as amended, being I.C. 36-7-14-1, et seq. (the "Act"), and having its office at 1200 County-City Building, South Bend, Indiana, and Miami Auto Glass, a corporation company organized under the laws of the State of Indiana (the "Developer"), having its principal place of business at 1430 Mishawaka Avenue, South Bend, IN 46615.

WHEREAS, to further the objectives of the Act:

1. The Commission has investigated areas within the corporate boundaries of the City of South Bend and has prepared and approved the Studebaker Corridor Development Area Development Plan, now a part of the Sample-Ewing Development Plan (the "Plan"), to redevelop the area known as the Sample-Ewing Development Area. A copy of the Plan and amendments thereto have been recorded in the St. Joseph County Recorder's Office.
2. The Commission has offered to sell and the Developer is willing to buy the property described in Exhibit A (the "Property") which is made a part of this agreement and to develop the Property according to the Plan and this agreement (the "Agreement").
3. The Commission believes that developing the Property according to the Agreement is in the best interest of the health, safety and welfare of the City and its residents and complies with the public purposes and provisions of the Act and applicable federal, state and local laws under which the development has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this Agreement, the parties agree as follows:

**SECTION I. SALE, PURCHASE PRICE.**

Subject to all of the terms of this Agreement, the Commission agrees to sell and the Developer agrees to purchase the Property for the sum of Five Thousand Dollars (\$5,000.00) (the "Purchase Price"), to be paid in cash or by certified check when the deed conveying the Property to the Developer is delivered.

**SECTION II. CONVEYANCE OF PROPERTY.**

A. Form of Deed. Subject to the terms of this Agreement, the Commission shall convey to the Developer title to the Property by quit claim deed (the "Deed"). In addition to the other conditions, covenants and restrictions in this Agreement, such conveyance and title shall be subject to:

1. Building and use restrictions in the Plan (and its covenants) and this Agreement.
2. Applicable building codes and zoning ordinances.
3. Any and all other covenants, restrictions, easements and reservations of record.

B. Time and Place of Closing on Sale of the Property. Subject to the terms and conditions of this Agreement, the Commission shall deliver the Deed and possession of the Property to the Developer on when the conditions precedent to closing enumerated in paragraph F of this Section have been met, or earlier if the parties mutually agree in writing. Conveyance shall be made at a time and place mutually agreed upon by the Commission and Developer. Fees for closing services provided by the title company shall be borne by the Commission. The Developer shall accept the conveyance and pay the Purchase Price to the Commission at that time and place.

Prior to closing and as a condition precedent thereto, Developer must provide to the Commission evidence satisfactory to the Commission of a binding commitment by a financial institution for financing of the Project.

C. Apportionment of Current Taxes. The Commission shall bear the portion of the current taxes (if any) on the Property which are a lien on the date of delivery of the Deed to the Developer.

D. Recordation of Deed. The Commission shall promptly record the Deed in the St. Joseph County Recorder's Office and shall pay the costs for recording the Deed.

E. Title Insurance. The Commission shall furnish the Developer a title insurance policy which insures the Developer's title in a sum equal to the Purchase Price and subject only to those items provided for in the Agreement.

F. Conditions Precedent to Closing. Prior to and as conditions precedent to closing:

1. The Commission shall provide to Developer a boundary survey of the property.
2. Developer shall submit a final sign plan conforming with the Studebaker Corridor Design Guidelines.

### **SECTION III. FAITHFUL PERFORMANCE GUARANTEE**

A. Amount. At or prior to the time of executing this Agreement, the Developer shall deliver to the Commission a faithful performance guarantee (the "Deposit") in a form satisfactory to the Commission in the amount of Five Hundred Dollars (\$500.00) as security for performing its

obligations under this Agreement.

B. Retention by Commission. If before the issuance of a Certification of Completion as provided in Section VI of this Agreement, the Developer defaults in its obligations under this Agreement and fails to cure such defect as this Agreement provides, then the Commission may exercise any and all rights it may have pursuant to the Performance Guaranty (the "Deposit") without any reduction, offset, or recoupment, as liquidated damages. Exercise of these rights shall be in addition to any other remedies and shall not waive any other right under this Agreement or other laws.

C. Return to Developer. Upon issuing the Certificate of Completion upon completion of redevelopment as required by this Agreement, the Commission shall return the Deposit to the Developer.

#### **SECTION IV. NATURE OF IMPROVEMENTS; TIME FOR COMMENCEMENT AND COMPLETION.**

A. Nature of Improvements. The Construction of improvements on the Property (the "Project") shall be substantially of the same size, scope and nature as that specified in the advertisement for bids and as proposed by the Developer in its bid to the Commission for disposition and development of the Property. In awarding the bid to the Developer, the Commission relied upon all representations, descriptions, discussions, drawings and other representations by the Developer of the Project. Those matters are incorporated into this Agreement by reference together with the bid packet of the Developer as well as the narrative description of the Project submitted with the bid, as amended and attached to this Agreement as Exhibit B.

B. Time for Construction. Construction of the Project on the Property shall begin no later than January 1, 2002, and shall qualify for the award of a certificate of occupancy from the Building Commissioner of the City of South Bend, Indiana, within twelve (12) months after commencement of construction.

#### **SECTION V. TIME FOR CERTAIN OTHER ACTIONS.**

A. Time for Submitting Plans for Design Development Review. The Developer shall submit for approval by the Department of Redevelopment a Final Site Plan of the Project detailing building materials, construction, and landscaping which must be approved prior to the commencement of construction. The approved Final Site Plan shall be recorded as an addendum to this Contract for Sale of Land and serve the Commission in its determination that Developer has completed the Project and is entitled to the Certificate of Completion as provided in Section VI.

B. Time for Submitting Financial Commitment. Prior to closing on the sale of the Property, the Developer shall submit to the Commission evidence satisfactory to the Commission of binding commitments for financing the Project.

**SECTION VI. COMPLETION.**

A. Certificate of Completion. Promptly after the Developer completes the Project under this Agreement and in substantial accordance with the plans and specifications approved by the Commission, the Commission shall furnish the Developer with a Certificate of Completion. This Certificate shall be a conclusive determination of satisfaction and termination of all covenants, requirements, obligations and the like in the Agreement and Deed, except the covenants of Section VII of the Agreement and Section III of the Deed. After the issuance of the Certificate of Completion by the Commission, neither the Commission nor any other party shall thereafter have or be entitled to exercise any rights, remedies, or controls otherwise available with respect to the Property as a result of a default in or breach of any provisions of the Agreement or the Deed by the Developer or any successor in interest or assign, unless:

- a. the Developer, any lessee, or any other successor in interest or assign defaults or breaches the covenants of Section VII of the Agreement or Section III of the Deed, and
- b. the right, remedy or control relates to such default or breach.

B. Form of Certification. Each Certification provided for in this Section shall be in such form as to be recordable in the St. Joseph County Recorder's Office.

C. Refusal or Failure to Provide Certification. If the Commission refuses or fails to provide Certification within thirty (30) days after the Developer's written request, the Commission shall provide the Developer with a written statement indicating how the Developer failed to comply with the provisions of this Agreement and giving the measures necessary, in the Commission's opinion, for the Developer to take in order to obtain such certification.

**SECTION VII. RESTRICTIONS UPON USE OF PROPERTY.**

A. Agreements of Developer. The Developer agrees and the Deed shall state that the Developer and its successors and assigns shall:

1. Devote the Property only to uses under the Plan; and
2. Not discriminate on the basis of race, color, creed, sex or national origin in the sale, lease, rental, use or occupancy of the Property.

B. Enforceability of Covenants. The parties agree and the Deed shall expressly state that the covenants in this Section shall be covenants running with the land and, except only as otherwise specifically provided in the Agreement, shall be binding for the benefit of and shall be enforceable by:

1. the Commission;
2. its successors and assigns;
3. the City of South Bend;
4. any successors in interest to the Property.

The covenants shall be enforceable against:

1. the Developer;
2. its successors and assigns;
3. every successor in interest to the Property; and
4. any party in possession or occupancy of the Property.

The parties further agree that the covenants in subsection VII(A)(1) shall remain in effect from the date of the Deed until December 31, 2015. The covenants in subsection VII(A)(2) shall remain in effect without limitation as to time but shall bind the Developer, each successor in interest to the Property, and each party in possession only for the time that the party or successor shall have title to, an interest in, or possession of the Property.

The terms “uses specified in the Plan” and “land use” shall include the land and all buildings, housing and other requirements or restrictions of the Plan pertaining to such land uses and improvements to the Property.

C. Beneficiaries of Covenants. The parties also agree that the Commission and its successors and assigns shall be deemed beneficiaries of the covenants in this Section.

The Deed shall state that the covenants shall run in favor of the Commission for the entire period the covenants shall be in force and effect, regardless of whether the Commission has at any time been, or is the owner of any land or interest in any land in favor of which such covenants relate.

If the above covenants are breached, the Commission shall have all of the rights and remedies to which they or any other beneficiary of the covenant may be entitled.

## **SECTION VIII. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

A. Representations as to Development. The Developer represents and agrees that its purchase of the Property and its other undertakings under this Agreement are and will be used for development of the Property and not for speculation in land holding. The Developer further recognizes that:

1. in view of the importance of the development of the Property to the general welfare of the City,
2. the substantial financial and other public assistance that has been made available by law and by the federal and local governments for the purpose of making such development possible, and
3. the fact that a transfer in ownership of the Developer is for practical purposes a transfer or disposition of the Property then owned by the Developer;

the qualifications and identity of the Developer and its shareholders, members or partners are of particular concern to the City and the Commission. The Developer further recognizes that it is due to such qualifications and identity that the Commission is entering into this Agreement with the Developer, and in so doing is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants.

B. Prohibition Against Transfer of Interest. The Developer agrees that any transactions with respect to the equity of the Developer, including any increased capitalization, merger, transfer or transfers of ownership of the outstanding shares of the Developer, or otherwise, which results in the ownership by persons who are not presently shareholders, members or partners of the Developer of 50% or more of the outstanding equity of the Developer at any time prior to the date of issuance of a Certificate of Completion, will constitute a violation of this Agreement unless the Commission has given prior written approval to such transfer or transfers, which approval will not be unreasonably withheld.

C. Prohibition Against Transfer of Property or Assignment of Agreement. The Developer represents and agrees for itself, its successors and assigns, that except for security for obtaining financing needed to enable the Developer to make the improvements under this Agreement; and except for any other purpose authorized by this Agreement, the Developer has not made or will not make prior to receiving the Certificate of Completion:

- (a) any total or partial sale, assignment, conveyance, or lease; or
- (b) any trust or power; or
- (c) any transfer in any other mode or form, with respect to the Agreement or the Property or any part thereof, any interest therein; or
- (d) any contract or agreement to do any of the above without prior written approval of the Commission, which approval shall not be unreasonably withheld.

This subsection does not prohibit the lease after certification of a part of the property as provided by Section VI.

D. Approval of Qualifications Prior to Transfer. The Commission may require as conditions precedent to any approval of transfer or assignment any and all information regarding the qualifications, financial responsibility, legal status, experience, background, and any and all other information it deems necessary or desirable in order to achieve and safeguard the purposes of the Act, the Plan, and this Agreement.

E. No Transfer of Developer's Obligations. Absent specific written agreement by the Commission to the contrary, no transfer or approval by the Commission thereof shall relieve the Developer or any other party bound in any way by the Agreement or otherwise with respect to the construction of the improvements and completion of the Project from any of its obligations with respect thereto.

F. Information as to Interest. The Developer agrees that during the period between execution of this Agreement and the Commission's issuance of the Certificate of Completion, the Developer will promptly notify the Commission of any and all changes in the ownership of shares or partnership interest, or any other act or transaction involving or resulting in any change in the ownership of such interest in the Developer or the relative distribution thereof, of which it or any of its officers have been notified or otherwise have knowledge or information, and which results in the ownership of 50% or more of all outstanding equity of the Developer by persons who are not presently shareholders, members or partners of the Developer.

## **SECTION IX. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES.**

A. Limitation upon Encumbrance of Property. Prior to the Commission's issuing a Certificate of Completion, the Developer shall not:

1. engage in any transaction creating any encumbrance upon the Property, whether by express agreement or operation of law; or
2. allow any encumbrance to be made on the Property, except for obtaining funds needed to make the improvements constituting the Project.

Before securing any financing by mortgage or similar lien instrument with regard to any part of the Property, the Developer shall notify the Commission. The Developer shall promptly notify the Commission of any encumbrance that has been attached to the Property, whether by the Developer's voluntary act or otherwise. For any mortgage financing made under this Agreement, the Property may, at the Developer's option, be divided into several parts if such subdivision:

1. in the Commission's opinion is not inconsistent with the purpose of the Plan, the Project and this Agreement; and
2. is approved in advance in writing by the Commission.

Any subdivision under this section must also be approved by any other local government agencies whose action is required for such subdivision under local or state law.

B. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement any mortgage holder authorized by the Agreement shall not be obligated by this Agreement to construct or complete the Project or to guarantee such construction or completion. No covenants or provisions in the Deed shall be construed so to obligate such holder. Nothing in this Agreement shall be construed to permit or authorize any such holder to use the Property in any manner not provided for or permitted in the Plan or this Agreement or to construct any improvements other than those provided for or permitted in the Plan or this Agreement.

C. Copy of Notice of Default to Mortgagee. Whenever the Commission delivers a notice or demand to the Developer with respect to any breach or default under this Agreement the Commission shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by the Agreement at the last address of such holder as shown in the records of the Commission.

D. Mortgagee's Option to Cure Defaults. After any breach or default referred to in subsection C, above, each such holder shall have the right at its option:

1. to cure or remedy such breach or default to the extent that it relates to the part of the Property covered by its mortgage; and
2. to add the cost of doing so to the mortgage debt and the lien of its mortgage.

Such holder shall not undertake or continue the construction beyond the extent necessary to conserve or protect those improvements or construction already made without first having expressly assumed the obligation to complete the construction on the property.

This assumption shall be made by written agreement pursuant to terms and conditions satisfactory to the Commission. Any holder who properly completes the Project shall be entitled to request a Certificate of Completion under the same terms and conditions provided for the Developer under Section VI.

E. Commission's Option to Pay Mortgage Debt or Purchase Property. In any case, where after default or breach by the Developer or any successor in interest under the Agreement, any mortgage holder of any part of the Property:

1. has, but does not exercise, the option to complete the improvements relating to the part of the Property covered by its mortgage or for which it has obtained title, and such failure continues for a period of sixty (60) days after the holder has been notified or informed of the default or breach; or
2. begins construction but does not complete such construction within the period as agreed upon by the Commission and such holder (which period



shall in any event be at least as long as the period prescribed for such construction or completion in the Agreement), and such default shall not have been cured within sixty (60) days after written demand by the Commission so to do,

the Commission shall have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured under it, and every mortgage instrument made prior to the Commission's issuance of a Certificate of Completion of construction with respect to the Property by the Developer or successor in interest shall so provide. In the event ownership of any part of the Property has vested in such holder by way of foreclosure or action in lieu of foreclosure, the Commission shall be entitled, at its option, to a conveyance of any part of the Property (as the case may be) upon delivering to such holder an amount equal to the sum of:

- i. the mortgage debt at the time of foreclosure or action in lieu of foreclosure, less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings;
- ii. all expense with respect to the foreclosure;
- iii. the net expense, if any, exclusive of general overhead, incurred by such holder in and as a direct result of the subsequent management of the Property;
- iv. the costs of any improvements made by such holder; and
- v. an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

F. Commission's Option to Cure Mortgage Default. Prior to the Commission's issuance of a Certificate of Completion, if the Developer or any successor in interest defaults or breaches any of its obligations under any mortgage or other instrument creating an encumbrance or lien upon any part of the Property, the Commission at its option may cure such default or breach. If this occurs, the Developer or successor in interest shall reimburse the Commission for all costs incurred by the Commission in curing such default or breach. Such reimbursement shall be in addition to and without limitation upon any other rights or remedies to which the Commission is entitled. Any such lien shall be subject always to the lien (including any lien contemplated, because of advances yet to be made) of any then existing mortgages on the Property authorized by the Agreement, including any lien contemplated, because of advances yet to be made.

G. Mortgage and Holder. For the purposes of this Agreement: the term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon any part of the Property as security for a loan to construct and otherwise finance the Project; the term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured

by such mortgage or deed of trust, including, but not limited to, the Federal Housing Commissioner, the Administrator of Veterans Affairs, and any successor in office of either such official.

## **SECTION X. REMEDIES.**

A. In General. Except as otherwise provided in the Agreement, upon any default in or breach of the Agreement by either party or any successor to such party, such party (or successor), upon written notice from the other, shall proceed immediately to cure or remedy such default or breach within thirty (30) days after receiving the notice. If action is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the aggrieved party may institute proceedings necessary or desirable in its opinion to cure and remedy the default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

B. Termination by Developer Prior to Conveyance.

1. If the Commission does not tender conveyance or possession of the Property in the manner and condition and by the date provided in the Agreement, and any such failure is not cured within forty-five (45) days after the date of written demand by the Developer, the Agreement shall be terminated at the option of the Developer, by written notice to the Commission, and, except for return of the Deposit, neither the Commission nor the Developer shall have any further rights against or liability to the other under the Agreement:
2. If the Developer furnishes evidence reasonably satisfactory to the Commission that, after and despite reasonably diligent effort for a period of sixty (60) days after the date of this Agreement, it has been unable to obtain mortgage financing for the Project on a basis and on terms that would generally be considered satisfactory by builders or contractors for construction of the nature and type of the Project, the Developer shall, after having submitted such evidence and if so requested by the Commission, continue to make diligent efforts to obtain such financing for a period of sixty (60) days after such request. If the Developer fails to obtain financing after efforts listed above, then the Agreement shall, at the option of the Commission or the Developer, be terminated by written notice thereof to the other party, and neither the Commission nor the Developer shall have any further rights against or liability to the other under the Agreement excepting that the Commission will retain the Deposit as provided under Section III herein.

C. Termination by Commission Prior to Conveyance.

In the event that:

- (a) prior to conveyance of the Property to the Developer and in violation of the Agreement:

- i. the Developer (or successor in interest) assigns or attempts to assign the Agreement or any rights therein or the Property, or
  - ii. there is any change in the ownership of the Developer or with respect to the identity of the parties holding partnership interest in the Developer or the degree thereof, which the Commission reasonably has refused to approve; or
- (b). the Developer does not submit reasonably satisfactory architectural and site plans, or evidence of necessary equity capital and mortgage financing, in satisfactory form and in the manner and by the dates respectively provided in the Agreement therefor; or
  - (c). the Developer does not pay the Purchase Price and take title to the Property upon tender of conveyance by the Commission pursuant to the Agreement,

then the Agreement and any rights of the Developer in the Agreement and the Property shall, at the option of the Commission, without need of the consent of the Developer, be terminated: Provided, however, that with respect to any default or failure referred to in subdivisions (a), (b), or (c) of this Section X, Subsection C a period of thirty (30) days shall be given to cure such failure or default after the date of written demand by the Commission shall be given to cure such failure or default.

In the event of any default or failure referred to in subdivisions (a) (b) or (c) of this Section X, Subsection C, which remains uncured by the Developer after notice and opportunity to cure have been provided by the Commission, the Deposit shall be retained by the Commission as liquidated damages and as its property without any deduction, offset, or recoupment whatsoever. Neither the Developer (or successor in interest) nor the Commission shall have any further rights against or liability to the other under the Agreement.

D. Revesting Title in Commission upon Happening of Event Subsequent to Conveyance to Developer. If subsequent to conveying any part of the Property to the Developer and prior to completion of the Project as certified by the Commission:

- 1. the Developer (or successor in interest) shall default in or violate its obligations with respect to the construction of the Project, including the nature and the dates for the beginning and completion thereof, or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months [six (6) months, if the default is with respect to the date of completion of the construction] after written demand by the Commission so to do; or
- 2. the Developer (or successor in interest) shall fail to pay real estate taxes or assessments on the Property when due, or shall place thereon any encumbrance or lien unauthorized by the Agreement, or shall cause any levy

or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments are not paid, or the encumbrance or lien removed or discharged or provision reasonably satisfactory to the Commission made for such payment, removal, or discharge, within ninety (90) days after written demand by the Commission so to do; or

3. there is, in violation of the Agreement, any transfer of any part of the Property, or any change in the ownership or distribution of the stock of the Developer, or with respect to the identity of the parties in control of the Developer or the degree thereof as provided in Section VIII, and such violation shall not be cured within sixty (60) days after written demand by the Commission to the Developer,

then the Commission shall have the right to re-enter and take possession of the Property and to terminate and re-vest in the Commission the estate conveyed by the Deed to the Developer. The intent of this provision, together with other provisions of the Agreement, is that the conveyance of the Property to the Developer shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that the event of any default, failure, violation, or other action or inaction by the Developer specified in this paragraph D the Developer's failure to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subdivisions, the Commission at its option may declare a termination in favor of the Commission of the title, and of all the rights and interest in and to the Property conveyed by the Deed to the Developer, and that such title and all rights and interests of the Developer, and any assigns or successors in interest to and in the Property, shall revert to the Commission; provided, that such condition subsequent and any re-vesting of title as a result thereof in the Commission:

1. shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by the Agreement, and (ii) any rights or interests provided in the Agreement for the protection of the holders of such mortgages; and
2. shall not apply to individual parts of the Property, if any, (or in the case of parts leased, the leasehold interest) on which the construction thereon has been completed under the Agreement and for which a Certificate of Completion has been issued as provided in Section VI.

In addition to, and without in any way limiting the Commission's right to reentry as provided for in the preceding paragraph, the Commission shall have the right to retain the Deposit, as provided in Section III hereof, without any deduction, offset or recoupment whatsoever, in the event of a default, violation or failure of the Developer as specified in the preceding paragraph.

E. Resale of Reacquired Property; Disposition of Proceeds. Upon the re-vesting in the Commission of title to the Property or any part thereof as provided in paragraph D above, the Commission shall, pursuant to its responsibilities under State law, use its best efforts to resell the

Property or part thereof (subject to such mortgage liens and leasehold interests as set forth in paragraph D above) as soon and in such manner as the Commission shall find feasible and consistent with the objectives of State law and of the Plan to a qualified and responsible party or parties (as determined by the Commission) who will assume the obligation of making or completing the construction of the Project in its stead or of another project as shall be satisfactory to the Commission and in accordance with the uses specified for such Property or part thereof in the Plan. Upon such resale of the Property, the proceeds shall be applied:

1. First, to reimburse the Commission, on its own behalf or on behalf of the City, for all costs and expenses incurred by the Commission, including but not limited to:
  - (a). salaries of personnel, in connection with the recapture, management, and resale of the Property or part thereof, but less any income derived by the Commission from the Property or part thereof in connection with recapture such management or resale;
  - (b). all taxes, assessments, and water and sewer charges with respect to the Property or part thereof, or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the Commission, an amount, if paid, equal to such taxes, assessments, or charges, as determined by the appropriate assessing officials, as would have been payable if the Property were not so exempt;
  - (c). any payments made or needed to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title in the Commission or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees;
  - (d). any expenditures made or obligations incurred in making or completing the construction or any part thereof on the Property or part thereof;
  - (e). and any amounts otherwise owing the Commission by the Developer and its successor or transferee; and
2. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to:
  - (a). the sum of the Purchase Price paid by it for the Property (or allocable to the part thereof) and the cash actually invested by the Developer in construction on the Property or part thereof, less

- (b). any gains or income withdrawn or made by the Developer from the Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by the Commission as its property.

F. Other Rights and Remedies of Commission; No Waiver by Delay. The Commission shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section X. This would include the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title, and interest of the Developer, and (except for such individual parts upon which construction has been completed under the Agreement and for which a Certificate of Completion as provided in Section VI is to be delivered, and subject to such mortgage liens and leasehold interests as provided in Section X, paragraph D hereof) its successors in interest and assigns, in the Property, and the revesting of title in the Commission. Any delay by the Commission in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section X shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way. This provision intends that the Commission should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this paragraph because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved; nor shall any waiver in fact made by the Commission with respect to any specific default by the Developer under this paragraph be considered or treated as a waiver of the Commission's rights to any other defaults by the Developer under this paragraph or with respect to the particular default except to the extent specifically waived in writing.

G. Enforced Delay in Performance for Causes Beyond Control of Party. For the purposes of any of the provisions of the Agreement, neither the Commission nor the Developer, as the case may be, nor any successors in interest, shall be considered in breach of or in default in its obligations with respect to the preparation of the Property for the Project, or the beginning and completion of construction, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence. These include, but are not limited to, acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors due to such causes. The purpose and intent of this provision is that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Commission with respect to the preparation of the Property for development or of the Developer with respect to construction of the Project as the case may be, shall be extended for the period of the enforced delays as determined by the Commission. The party seeking the benefit of the provisions of this paragraph shall, within ten (10) days after the beginning of the enforced delay, have first notified the other party thereof in writing and of the cause or causes thereof, and shall have requested an extension for the period of the enforced delay.

H. Rights and Remedies Cumulative. The rights and remedies of the parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative. The exercise by

either party of any one or more of such remedies shall not preclude the exercise, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, manner or time thereof, any obligation of the other party, or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to that particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver of any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

I. Party in Position of Surety With Respect to Obligations. The Developer, for itself, its successors and assigns, and for all other persons who are or who shall become liable upon or subject to any obligation or burden under the Agreement, whether by express or implied assumption or otherwise, hereby waives, to the fullest extent permitted by law, any and all claims or defenses otherwise available on the ground of its or their being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

## **SECTION XI. MISCELLANEOUS.**

A. Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested. No member, official, or employee of the Commission shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer or successor or assign or on any obligations under the terms of the Agreement.

B. Recordation. This Agreement shall be recorded in the office of the St. Joseph County Recorder immediately subsequent to its execution.

C. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

1. The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Developer will state, in all solicitations or advertisements for employees

placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

D. Provisions Not Merged With Deed. None of the provisions of the Agreement are intended to or shall be merged by reason of any Deed transferring title to the Property from the Commission to the Developer or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of the Agreement.

E. Titles of Articles and Sections. Any titles of the several parts, sections, and paragraphs of the Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

F. Notices and Demands. A notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- i. in the case of the Developer, is addressed to or delivered personally to the Developer as follows:

Miami Auto Glass  
1430 Mishawaka Avenue  
South Bend, IN 46615

ATTN: Charles Fulmer, Jr. and  
Steve Ellison

- ii. in the case of the Commission, is addressed to or delivered personally to the Commission at 1200 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601,

or at such other address with respect to either such party as that party may from time to time designate in writing and forward to the other as provided in this Section.

G. Governing Law. This agreement shall be interpreted and enforced according to the laws of the State of Indiana.

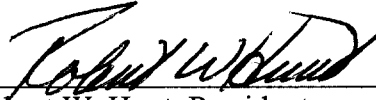
H. Corporate Authority. The undersigned persons executing and delivering this Agreement on behalf of the Grantee represent and certify that they are the duly elected officers of Grantee and have been fully empowered, by proper resolution of the Board of Directors to execute and deliver this Agreement and that all necessary corporate action has been taken and done by Grantee.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement on the date first written above.

[SIGNATURE PAGES ATTACHED]



CITY OF SOUTH BEND, BY ITS  
DEPARTMENT OF REDEVELOPMENT



Robert W. Hunt, President  
South Bend Redevelopment Commission

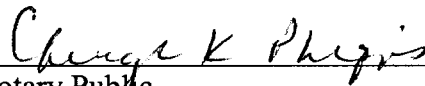
ATTEST:

  
Philip J. Faccenda, Secretary

STATE OF INDIANA        )  
                                          )SS:  
ST. JOSEPH COUNTY        )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the City of South Bend, Department of Redevelopment by Robert W. Hunt, President, and Philip J. Faccenda, Secretary, and acknowledged the execution of the foregoing Contract for Sale of Land for Private Development.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on Sept 7, 2001.

  
Notary Public  
Residing in St. Joseph County, IN

My Commission Expires:

CHERYL K. PHIPPS  
Notary Public, State of Indiana  
County of St. Joseph  
My Commission Expires 01/07/2007



MIAMI AUTO GLASS

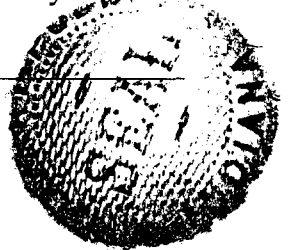
By: Charles Fulmer  
Its: vice - President

STATE OF INDIANA        )  
                                          )SS:  
COUNTY OF ST. JOSEPH )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Miami Auto Glass by Charles Fulmer its vice President acknowledged the execution of the foregoing Contract for Sale of Land for Private Development.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on 7-26, 2001.

[Signature]  
Notary Public  
Residing in St. Joseph County, IN



My Commission Expires:  
6-14-02

This instrument prepared by: Cheryl A. Greene, Assistant City Attorney, City of South Bend. 1400 County-City Building, South Bend, IN 46601.