

Resolution No. _____

Passed _____

20

RESOLUTION NO. 4 - 11

A RESOLUTION AUTHORIZING THE DIRECTOR OF SAFETY AND SERVICE TO ENTER INTO A CONTRACT AND/OR CONTRACTS WITH GIR HOLDINGS LLC, AND THE WILL-BURT COMPANY, ("WILL-BURT") PERMITTING WILL-BURT TO ASSUME THE RIGHTS, BENEFITS, DUTIES, AND OBLIGATIONS OF ROUND TOP WINDOW PRODUCTS, INC. UNDER THE ENTERPRISE ZONE AGREEMENT DATED DECEMBER 26, 2006, BETWEEN THE CITY OF ORRVILLE, GIR HOLDINGS LLC, AND ROUND TOP WINDOW PRODUCTS, INC., AND DECLARING AN EMERGENCY.

WHEREAS, on December 26, 2006, the City of Orrville, GIR Holdings LLC, and Round Top Window Products, Inc. entered into an Enterprise Zone Agreement, (hereinafter referred to as the "Agreement"); and

WHEREAS, Round Top Window Products, Inc. has terminated operations in the City of Orrville; and

WHEREAS, Will-Burt has leased the facility at 356 Collins Boulevard, Orrville, Ohio, from GIR Holdings LLC, and has requested permission to assume the rights, benefits, duties, and obligations of Round Top Window Products, Inc. under the December 26, 2006 enterprise zone agreement subject to specified modifications indicated herein below;

WHEREAS, the City of Orrville, Ohio hereby desires to allow said assumption to provide for the changes in job creation and personal property investment in the City of Orrville;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Orrville, Ohio:

Section 1: That the Director of Safety and Service is hereby authorized to enter into a contract and/or contracts permitting Will-Burt to assume the rights, benefits, duties, and obligations of Round Top Window Products, Inc. under the Enterprise Zone Agreement, dated December 26, 2006, between GIR Holdings LLC, Round Top Window Products, Inc., and the City of Orrville, Ohio substantially in the form marked as "Exhibit A", which is attached hereto and made a part hereof;

Section 2: That this resolution is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health and safety of said City and for the further reason that it is necessary to create job opportunities; therefore, this ordinance shall be in effect immediately after its passage and approval by the Mayor.

Passed this 7th day of February, 2011.

Attest:

J. Peppard
Clerk of Council

[Signature]
President of Council

Approved:

[Signature]
Mayor

2/7/11
Date



EXHIBIT A
Enterprise Zone Agreement

This agreement made and entered into by and between the City of Orrville, Ohio, a municipal corporation, with its main offices at 207 North Main Street, Orrville, Ohio (hereinafter referred to as "ORRVILLE"), GIR Holdings LLC (hereinafter referred to as "GIR" and, Round Top Window Products (Ohio), Inc., an Ohio corporation with its main offices located at 192 Mary Street, Brantford, Ontario, Canada N3T 5T6 (hereinafter referred to as "ROUND TOP"), WITNESSETH;

WHEREAS, ORRVILLE has encouraged the development of real property and the acquisition of personal property located in the area designated as an Enterprise Zone; and

WHEREAS, GIR is desirous of constructing a 35,000 square foot facility at 356 Collins Boulevard, Orrville, Ohio (hereinafter referred to as the "PROJECT") within the boundaries of the aforementioned Enterprise Zone, provided that the appropriate development incentives are available to support the economic viability of said PROJECT; and

WHEREAS, the Council of the City of Orrville, Ohio by Resolution No. 18 – 03 adopted July 21, 2003, designated the area as an "Enterprise Zone" pursuant to Chapter 5709 of the Ohio Revised Code; and

WHEREAS, effective August 29, 2003, the Director of Development of the State of Ohio determined that the aforementioned area designated in said Resolution contains the characteristics set forth in R.C. 5709.61(A) and certified said area as Enterprise Zone under said Chapter 5709; and

WHEREAS, ORRVILLE having the appropriate authority for the stated type of project is desirous of providing GIR and ROUND TOP with incentives available for the developments of the PROJECT in said Enterprise Zone under Chapter 5709 of the Ohio Revised Code; and

WHEREAS, GIR and ROUND TOP have submitted a proposed agreement application (herein attached as Exhibit A) to ORRVILLE said application (hereinafter referred to as "Application"); and

WHEREAS, ROUND TOP has remitted the required state application fee of \$750.00 made payable to the Ohio Department of Development with the application to be forwarded with the final agreement; and

WHEREAS, the Safety – Service Director of the City of Orrville has investigated the application of GIR and ROUND TOP and has recommended the same to the Council of the City of Orrville on the basis that GIR and ROUND TOP are qualified by financial responsibility and business experience to create and preserve employment opportunities in said Enterprise Zone and improve the economic climate of the City of Orrville; and

WHEREAS, the project site proposed by GIR is located in the Orrville City School District and the Wayne County Joint Vocational School District and the Boards of Education of the Orrville City School District and the Wayne County Joint Vocational School District have been notified in accordance with Section 5709.83 and have been given a copy of the Application; and

WHEREAS, pursuant to R.C. 5709.632 and in conformance with the format required under R.C. 5709.631, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained; NOW,

THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. GIR shall construct a new 35,000 square foot facility at 356 Collins Boulevard, Orrville Ohio, to house ROUND TOP's manufacturing of custom architectural windows. Said facility shall be constructed on lot #2598 in the 1st ward of Orrville, Ohio.

In addition, ROUND TOP will lease this new facility and will purchase and install new machinery and equipment including but not limited to those outlined in Appendix A.

The PROJECT will begin December 19, 2006 and all acquisition, construction, and installation will be completed by July 31, 2007. Any changes to the beginning and completion dates must be agreed to by formal resolution and an amended agreement.

The total investment of this Establish PROJECT is significant as evidenced in Exhibit A.

2. ROUND TOP shall create within a time period not exceeding 36 months after the commencement of construction of the aforesaid facility, the equivalent of 21 new full-time permanent job opportunities, 0 new part-time permanent job opportunities, 0 new full-time temporary job opportunities, and 0 new part-time temporary job opportunities and/or ROUND TOP will use its best efforts to retain 0 existing full-time equivalent jobs at the Orrville, Ohio facility.

ROUND TOP's schedule for hiring is as follows: create 21 new jobs in year one (construction); 0 new jobs in year two; and 0 new jobs in year three. The job creation period begins March 1, 2007 and all jobs will be in place by February 28, 2010.

ROUND TOP currently has 0 full-time permanent employees, 0 part-time permanent employees, 0 full-time temporary employees, and 0 part-time temporary employees at the project site. In total, ROUND TOP has 0 full-time permanent employees, 0 part-time permanent employees, 0 full-time temporary employees, and 0 part-time temporary employees in the State of Ohio.

This increase in the number of employees will result in approximately \$612,000 dollars of additional annual payroll for ROUND TOP. The following is an itemization by the type of new jobs created: full-time permanent \$612,000, full-time temporary \$0, part-time permanent \$0, and part-time temporary \$0. The retention of the existing jobs will maintain the current annual payroll of \$0 dollars.

3. GIR and/or ROUND TOP shall provide to the proper Tax Incentive Review Council any information reasonably required by the Council to evaluate the enterprise's compliance with the agreement, including returns filed pursuant to section 5711.02 and 5727.08 of the Ohio Revised Code if requested by the Council.

- a. In addition, GIR and/or ROUND TOP agree to continue in operation for at least one additional year for each year for which abatement is granted.
- b. ROUND TOP hereby agrees to use their best efforts to hire 30% of any said employment opportunities with people who at the time of employment have a City of Orrville mailing address. ROUND TOP further agrees that all those who are hired who do not have a City of Orrville mailing address shall be encouraged to relocate so that they have a City of Orrville mailing address.

4. ORRVILLE hereby grants a tax exemption pursuant to R.C. 5709.632 of the Revised Code for eligible new tangible personal property including inventory, if applicable, acquired in conjunction with the PROJECT and will only apply to the investment limits expressed in the project description as defined in Sections 1 and 4 of this agreement.

The minimum investment for tangible personal property to qualify for the exemption is 1,200,000 to purchase machinery and equipment first used in business at the facility as a result of the project, \$200,000 for furniture and fixtures and non-inventory personal property first used in business at the facility as a result of this project, and \$600,000 for new inventory. The maximum investment for tangible personal property to qualify for exemption is \$X to purchase machinery and equipment first used in business at the facility as a result of the project, \$X for furniture and fixtures and non-inventory personal property first used in business at the facility as a result of this project, and \$X for new inventory.

The exemption commences the first year for which the tangible personal property would be first taxable were that property not exempted from taxation. No exemption shall commence after tax return year 2007 nor extend tax return year 2021. In no instance shall any tangible personal property be exempted from taxation for more than ten return years

unless under division (D)(2) of section 5709.62 or under division (C)(1)(b) of section 5709.63 of the Revised Code, the Board of Education approves exemption for a number of years in excess of ten, in which case the tangible personal property may be exempted from taxation for that number of years, not to exceed fifteen return years.

5. ORRVILLE hereby grants GIR a tax exemption for real property improvements made to the PROJECT site pursuant to Section 5709.632 of the Ohio Revised Code and shall be in the following amounts:

Year of Tax Exemption
1 – 15

Tax Exemption Amount
50 %

The minimum investment for real property to qualify for the exemption is \$1,400,000 as a result of the project. The maximum investment for real property to qualify for exemption is \$1,750,000 as a result of the project.

The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. No exemption shall commence after 2008 nor extend beyond 2022.

GIR and/or ROUND TOP must file the appropriate tax forms (DTE 23) with the County Auditor and (#913) with the State Department of Taxation to effect and maintain the exemptions covered in the agreement. The #913 Ohio tax form must be filed annually.

6. ROUND TOP shall pay an annual fee equal to (\$250.00) Two Hundred Fifty dollars.

The fee shall be made payable to the City of Orrville once per year for each year the agreement is effective on the days and in the following form: a check by March 31. The fee is to be paid to the Safety – Service Director and made out to the City of Orrville. This fee shall be deposited in a special fund created for such purpose and shall be used exclusively for the purpose of complying with Section 5709.68 of the Revised Code and by the Tax Incentive Review Council created under Section 5709.85 of the Revised Code exclusively for the purposes of performing the duties prescribed under that section.

7. GIR and/or ROUND TOP shall pay such real and tangible personal property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. If GIR and/or ROUND TOP fails to pay such taxes or file such returns and reports, all incentives granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

8. ORRVILLE shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

9. If for any reason the Enterprise Zone designation expires, the Director of the Ohio Department of Development revokes certification of the zone, or ORRVILLE revokes the designation of the zone, entitlements under this agreement shall continue for the number of years specified under this agreement, unless GIR and/or ROUND TOP materially fail to fulfill its obligations under this agreement and ORRVILLE terminates or modifies the exemptions from taxation granted under this agreement.
10. If GIR and/or ROUND TOP materially fail to fulfill its obligations under this agreement, other than with respect to the number of employee positions estimated to be created or retained under this agreement, or if ORRVILLE determines that the certification as to delinquent taxes required by this agreement is fraudulent, ORRVILLE may terminate or modify the exemptions from taxation granted under this agreement and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement. If ORRVILLE makes a demand for repayment, GIR and/or ROUND TOP shall make such repayment within thirty (30) days.
11. GIR and/or ROUND TOP hereby certify that at the time of this agreement is executed, GIR and/or ROUND TOP do not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which GIR and/or ROUND TOP are liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Ohio Revised Code, or, if such delinquent taxes are owed, COMPANY currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against GIR and/or ROUND TOP. For the purposes of certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.
12. GIR and/or ROUND TOP affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.
13. GIR, ROUND TOP, and ORRVILLE acknowledge that this agreement must be approved by formal action of the legislative authority of the City of Orrville as a condition for the agreement to take effect. This agreement takes effect upon such approval.
14. ORRVILLE has developed a policy to ensure recipients of Enterprise Zone tax benefits practice non-discriminating hiring in its operations. By executing this agreement, GIR and/or ROUND TOP are committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.

15. Exemptions from taxation granted under this agreement shall be revoked if it is determined that GIR and/or ROUND TOP, any successor enterprise, or any related member (as those terms are defined in Section 5709.61 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under Division (E) of Section 3735.671 or Section 5709.62, 5709.63, or 5709.632 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.
16. In any three-year period during which this agreement is in effect, if the actual number of employee positions created or retained by ROUND TOP is not equal to or greater than seventy-five percent (75%) of the number of employee positions estimated to be created or retained under this agreement during that three-year period, GIR and/or ROUND TOP shall repay the amount of taxes on the property that would have been payable had the property not been exempted from taxation under this agreement during that three-year period. In addition, ORRVILLE may terminate or modify the exemptions from taxation granted under this agreement.
17. GIR and/or ROUND TOP affirmatively covenant that it has made no false statements to the State or local political subdivision in the process of obtaining approval for the Enterprise Zone incentives. If any representative of GIR and/or ROUND TOP have knowingly made a false statement to the State or local political subdivision to obtain the Enterprise Zone incentives, GIR and/or ROUND TOP shall be required to immediately return all benefits received under the Enterprise Zone Agreement pursuant to ORC Section 9.66 (C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66 (C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC 2921.13 (D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.
18. This agreement is not transferable or assignable without the express, written approval of the Council of the City of Orrville.
19. ORRVILLE acknowledges that in order to develop and finalize this agreement, GIR and/or ROUND TOP have disclosed to ORRVILLE certain information determined to be proprietary by GIR and/or ROUND TOP. To the maximum extent permissible by law, ORRVILLE agrees not to disclose any such information, not already in the public domain, to any person, firm, or corporation without GIR's and/or ROUND TOP's prior written consent; provided, further that if any such disclosure is mandated by federal, state or local law (such as the Freedom of Information Act and all public records and sunshine laws) ORRVILLE agrees to promptly notify GIR and/or ROUND TOP of the requirement to make such disclosure and to fully cooperate with GIR and/or ROUND TOP in any procedures permitted by law to limit such disclosure.

IN WITNESS WHEREOF, the City of Orrville, Ohio by Becky L. Jewell, its Safety – Service Director, and pursuant to Resolution No. _____ has caused this instrument to be executed this _____ day of December, 2006 and GIR Holdings LLC, by David B. Renner

and Douglas Reusser, have caused this instrument to be executed this ____ day of December, 2006, and Round Top Window Products (Ohio), Inc. by Dianne Waterhouse, its President, has caused this instrument to be executed this ____ day of December, 2006.

THE CITY OF ORRVILLE, OHIO

By: Becky L. Jewell, Safety Service Director

GIS HOLDINGS LLC

By: David B. Renner

By: Douglas Reusser

ROUND TOP WINDOWNS PRODUCTS (OHIO), INC.

By: Dianne Waterhouse, President

Approved as to form:

Daniel R. Lutz, Law Director

NOTE: A copy of this agreement must be forwarded to the Ohio Department of Taxation, the Ohio Department of Development, and the Wayne County Auditor within fifteen (15) days of approval to be finalized.

AMENDMENT TO THE ENTERPRISE ZONE AGREEMENT DATED DECEMBER 26, 2006,
BETWEEN GIR HOLDINGS LLC, ROUND TOP WINDOW PRODUCTS (OHIO), INC., AND
THE CITY OF ORRVILLE, OHIO.

This amendment is made and entered into by and between the City of Orrville, Ohio, a municipal corporation, with its main offices located at 207 North Main Street, Orrville, Ohio 44667, and GIR Holdings LLC, a limited liability company properly registered in the State of Ohio, and, the Will-Burt Company, an Ohio corporation, with its main offices located at 169 South Main Street, Orrville, Ohio.

WHEREAS, on December 26, 2006, the City of Orrville ("City") GIR Holdings LLC ("GIR"), and Round Top Window Products (Ohio), Inc. entered into an Enterprise Zone Agreement (hereinafter referred to as the "Agreement"); and

WHEREAS, Will-Burt has leased the facility at 356 Collins Boulevard from GIR and has requested permission to assume the existing enterprise zone agreement; and

WHEREAS, the parties hereto desire to amend the Agreement to provide for the changes in job creation;

NOW, THEREFORE, the parties hereby agree as follows:

A. Will-Burt shall create within a time period not exceeding 36 months the equivalent of 25 new full-time permanent job opportunities, 0 new part-time permanent job opportunities, 0 new full-time temporary job opportunities, and 0 new part-time temporary job opportunities.

Will-Burt's schedule for hiring is as follows: create 25 new jobs in year one; 0 new jobs in year two; and 0 new jobs in year three. The job creation period begins January 1, 2011 and all jobs will be placed by December 31, 2013.

Will-Burt currently has 0 full-time permanent employees, 0 part-time permanent employees, 0 full-time temporary employees, and 0 part-time temporary employees at the project site. In total, Will-Burt has 286 full-time permanent employees, 0 part-time permanent employees, 38 full-time temporary employees, and 1 part-time temporary employee in the State of Ohio.

The increase in the number of employees will result in approximately \$1,447,160 dollars of additional annual pay for Will-Burt. The following is an itemization by the type of new jobs created: full-time permanent \$1,447,160, full-time temporary \$0, part-time permanent \$0, and part-time temporary \$0.

B. City hereby grants a tax exemption pursuant to R.C. 5709.632 of the Revised Code for eligible new tangible personal property including inventory, if applicable, acquired in conjunction with the PROJECT and will only apply to the investment limits expressed in the project description as defined in Sections 1 and 4 of this agreement.

The minimum investment for tangible personal property to qualify for the exemption is \$360,500 to purchase machinery and equipment first used in business at the facility as a result of the project, \$0 for furniture and fixtures and

non-inventory personal property first used in business at the facility as a result of this project, and \$0 for new inventory.

The exemption commences the first year for which the tangible personal property would be first taxable were that property not exempted from taxation. No exemption shall commence after tax return year 2006 nor extend tax return year 2020. In no instance shall any tangible personal property be exempted from taxation for more than ten return years unless under division (D)(2) of section 5709.62 or under division (C)(1)(b) of section 5709.63 of the Revised Code, the Board of Education approves exemption for a number of years in excess of ten, in which case the tangible personal property may be exempted from taxation for that number of years, not to exceed fifteen return years.

- C. All of the other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS, WHEREOF, the City of Orrville, Ohio by Steven M. Wheeler, its Safety-Service Director, and pursuant to Resolution No. ___-11, has caused this instrument to be executed on this ___ day of February, 2011, and GIR Holdings LLC by David B. Renner and Douglas Reusser, have caused this instrument to be executed on this ___ day of February, 2011, and the Will-Burt Company by Jeffrey Evans, its Chief Executive Officer, has caused this instrument to be executed on this ___ day of February, 2011.

CITY OF ORRVILLE

Witness

Safety-Service Director

Witness

GIR HOLDINGS, LLC

Witness

Witness

THE WILL-BURT COMPANY

Witness

Witness