

**PERFORMANCE AGREEMENT BETWEEN
THE CITY OF LAWRENCE, KANSAS AND AMARR**

Whereas, on October 15, 2003, Garage Door Group, Inc. DBA Amarr Garage Doors, 3800 Greenway Circle, Lawrence, Kansas ("AMARR"), Lawrence, Kansas submitted an application ("Application") for property tax abatement to the City of Lawrence, Kansas ("City"), which is attached hereto and incorporated by reference; and

Whereas, in reliance upon the Application, the governing body of the City did approve a fifty-five percent (55%) property tax abatement on November 18, 2003, conditioned upon certain conditions precedent including but not limited to: 1) the execution of a performance agreement between the City and AMARR pursuant to the City's Ordinance on Tax Abatements and Incentives for Economic Development (Ordinance No. 7706); and 2) and other lawfully required conditions and approvals, including approval of tax exemption by the State Board of Tax Appeals; and

Whereas, Ordinance No. 7706 provides, in part, "Any tax abatement granted pursuant to this ordinance shall be accompanied by a Performance Agreement between the applicant and the City. The Performance Agreement shall include provisions to ensure compliance with the requirements of this ordinance, and appropriate consequences in the event of non-compliance." (Section 24 of Ordinance No. 7706)"

Whereas, the City and AMARR desire to enter into this Performance Agreement ("Performance Agreement") prior to the adoption of the ordinance authorizing the tax abatement pursuant to Kansas law;

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS
HEREIN, THE CITY AND AMARR HEREBY ENTER INTO THIS PERFORMANCE
AGREEMENT:**

1. The above recitals are incorporated by reference as if fully set forth herein.
2. The approval of the tax abatement by the governing body of the City was in reliance upon the Application submitted by AMARR. Specifically, the Application and the approved tax abatement provided that AMARR would: 1) construct a facility, new construction and modification to existing facility in the capital amount of \$7,700,000; 2) expend \$9,400,000 in the purchase of new machinery and equipment; and 3) employ eighty (80) full-time employees ("employees") as the result of the project.
3. The wages and classifications of the employees are set forth in the Application. Additionally, the Kansas Department of Human Resources (KDHR) classifications for the employees are set forth in the City report prepared by the City's Director of Finance, dated October 22, 2003. The City report is attached hereto to this Agreement.
4. Wage Floor and Health Insurance Requirements

If AMARR does not comply with the wage floor and health insurance requirements of Ordinance No. 7706, then AMARR shall be required to pay, on an annual basis, to the City, a certain amount as established below:

AMARR shall pay to the City for the applicable year of non-compliance, by May 20 of the following year, an amount of money equal to two hundred percent (200%) of the difference between the actual wages paid to employees and the amount of wages that should have been paid to the same employees to comply with the wage floor and health insurance requirements of Ordinance No. 7706. For purposes of this Agreement, employees shall mean the eighty (80) employees as identified in the Application for the tax abatement. This payment to the City may not exceed the annual value of the abated property taxes to the business.

The Public Incentives Review Committee shall monitor AMARR's compliance with the wage floor and health insurance requirements. If AMARR fails to comply with the wage floor and/or health insurance requirements, AMARR shall provide a written explanation and a plan for correcting the non-compliance. This information shall be contained in the report submitted by the Public Incentives Review Committee to the City Commission. If AMARR is in non-compliance with the wage floor and/or health insurance requirements for two (2) consecutive years, the City Commission shall take appropriate actions to completely remove the tax abatement for the business, unless the City Commission, by a super-majority vote (currently four (4) votes), determines that extraordinary circumstances exist and the tax abatement should be allowed to continue.

5. Additional Compliance Requirements:

The City shall also require the monitoring of the average wage criteria of the Kansas Department of Human Resources, the number of jobs provided by the employer, and the capital investment projections set forth in the original application. Any non-compliance shall be reviewed by the City's Public Incentive Review Committee, and as appropriate, the City Commission. The tax abatement shall be annually reviewed by the Public Incentives Review Committee which shall forward a copy of the annual review and appropriate recommendations to the City Commission. The City Commission shall receive the annual review report, and if the City Commission determines that AMARR is not in compliance with the provisions of this Agreement, then the tax abatement may be modified as the City Commission deems appropriate. The County Appraiser and the State Board of Tax Appeals shall be notified of appropriate actions.

The tax abatement granted pursuant to this Agreement shall be subject to an annual review by the City's Public Incentives Review Committee to ensure that the ownership, use of property, and the economic performance of the business, including the capital investment, employment, and wages, are pursuant to requirements and criteria of Ordinance No. 7706, the application for tax abatement, and the conditions of the granting of the tax abatement. The review shall also include a comprehensive review of the entire abatement period for

AMARR, including milestones and project phases for AMARR. The annual review shall provide an opportunity for AMARR to describe their achievements, especially in the areas of environmentally sound practice, community engagement and services, and job training. If AMARR:

- a) no longer qualifies for a tax abatement pursuant to law or Ordinance No. 7706;
- b) substantially fails to meet the expectations set forth in the application for a tax abatement, including failure to meet employment, wage, or capital investment plans in the application; or
- c) substantially fails to meet the criteria or objectives of Ordinance No. 7706;

the City Commission, after notice and a public hearing may modify the abatement by ordinance.

6. Access to AMARR information and City Review:

AMARR shall be required to complete an annual report by March 1. The information in the report will cover the time period of January 1 through December 31 of the previous year. The annual report will be reviewed by the Public Incentives Review Committee and presented to the City Commission by May 1. The failure of AMARR to provide accurate and timely information to the City in the preparation of the annual report shall be grounds for the modification or repeal of the tax abatement. The City shall retain a qualified third party consultant to assist the preparation of any report and to maintain the confidentiality of the personnel and wage records of a business.

AMARR shall maintain payroll records for employees and shall preserve them for a period of two (2) years. The records shall contain:

- a) the name and address of each employee;
- b) the job title and classification;
- c) the number of hours worked each day;
- d) the gross wages earned and deductions made;
- e) a record of health insurance payments made by the employee and AMARR; and
- f) additional information necessary to establish that an employee is exempt from the wage floor and health insurance requirements established in Section 5 of Ordinance No. 7706.

The City and AMARR acknowledge that AMARR has a self-insured health insurance program. For purposes of determining compliance with the requirements of Ordinance No. 7706 and the terms of this Agreement which require that AMARR provide a minimum of seventy percent (70%) of the cost of an employer-sponsored health insurance policy for covered employees (or provide covered employees a wage which is \$1.50 per hour above the wage floor

of Ordinance No. 7706), the City and the third-party auditor retained by the City shall include all of AMARR's total out of pocket benefit costs (including but not limited to all direct and indirect self-insured health benefit costs) paid by AMARR for such covered employees. Deductibles, co-payments and co-insurance amounts shall not be included in determining the amount of costs attributed to the employee.

A copy of these records shall be provided to the third-party auditor to review and determine compliance with the requirements of this Agreement and Ordinance No. 7706. Members of the Public Incentive Review Committee, City staff selected by the City Manager, or the City Commission may review these records in the custody of the third-party auditor but may not do anything to remove or destroy their confidential nature.

7. This Agreement shall be governed by the laws of Kansas. This Agreement may not be assigned or transferred without the written permission of the parties.

This Agreement shall expire one (1) year after the expiration of the tax abatement granted pursuant to this Agreement. In the event that a tax abatement pursuant to this Agreement is: not granted by the State Board of Tax Appeals, or is completely removed by the City pursuant to this Agreement, this Agreement shall be null and void.

AGREED TO THIS 17th DAY OF December, 2003.

FOR AMARR:

Deibert J. Phelps

BE IT REMEMBERED, that on this 17th day of December, 2003, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Deibert, who is personally known to me to be the same person who executed the above Agreement, and such person duly acknowledged the execution of the same to be their free and voluntary act and deed.

Kelli Nicks
Notary Public



FOR CITY OF LAWRENCE, KANSAS:

David M. Dunfield
David M. Dunfield
Mayor

ATTEST:

A handwritten signature in dark ink, appearing to read 'F. S. Reeb', is written over a horizontal line.

Frank S. Reeb
City Clerk