

*City Council Memorandum*

**To: Mayor Fasbender & City Councilmembers**  
**From: City Administrator Dan Wietecha**  
**Date: October 4, 2021**  
**Item: Lease 535 East 31<sup>st</sup> St.**

**Council Actions Requested:**

- 1. Recognize that there is no conflict of interest in former City Attorney Dan Fluegel's representation of Custom Sawdust LLC.**
- 2. Approve 18-month lease of building at 535 East 31<sup>st</sup> St. for cold storage.**

**Background Information:**

About a decade ago, HEDRA acquired the UBC Lumber buildings east of downtown for redevelopment into higher tax base, property upgrade, and jobs and/or services. Since then, the City has used the buildings for secure, cold storage to protect City equipment. We have been on borrowed time for a while, and now the north building is in process of being sold to enable development of an apartment building. Under the development agreement, the old building needs to be removed and the site cleared by April 1, 2022.

This presents us with two issues: an immediate need for short-term storage and a long-term solution to meet the City's storage needs. There is money in the proposed 2022 budget allocated toward short-term rental and clearing the development site. City staff have been investigating multiple options for these issues. The short-term options are limited by facility requirements such as square footage, sidewall height, and overhead doors and few available facilities to rent. Long-term options center on building on the Public Works property; more info will be brought forward as we narrow the options in the next couple weeks.

We have negotiated an 18-month lease at \$3650 per month, running November 1, 2021, through April 30, 2023. This building (535 East 31<sup>st</sup> Street) will meet the majority of the short-term storage needs. This would allow us time to move equipment into the building, clear the UBC site

by the deadline, and maintain storage during construction of a new steel building on the Public Works site.

Custom Sawdust LLC, the building owner, has an existing Development Agreement with HEDRA and a Deferred Assessment Agreement with the City on this property. Custom Sawdust would not be violation of either agreement by leasing a portion of the newly constructed building for this period.

Attorney Dan Fluegel of Fluegel Law Firm PA is the City's former attorney and represents Custom Sawdust (who has been a longtime client). Mr. Fluegel did not previously work on any part of the subject matter for the City, and there is no actual conflict of interest under the Rules of Professional Responsibility. In order to avoid the appearance of a conflict, my recommendation includes a recognition that there is no conflict of interest.

**Financial Impact:**

The 18-month lease is for \$3650 per month running from November 1, 2021 through April 30, 2023. A budget amendment to cover the two months during 2021 is a separate item on the City Council's agenda.

**Committee Discussion:**

Not applicable

**Attachment:**

Lease Agreement

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (“Lease”) is made and entered into this 4<sup>th</sup> day of October, 2021 (the “Effective Date”), by and between City of Hastings, Minnesota, a Minnesota municipal corporation (the “Tenant”), and Custom Sawdust LLC, a Minnesota limited liability company (the “Landlord”). Landlord and Tenant may be referred to collectively herein as the “parties” or each a “party”.

**ARTICLE 1  
PREMISES**

Landlord, for and in consideration of the rents, covenants and conditions hereinafter contained to be performed and observed by Tenant, does hereby demise and lease to Tenant a portion of the real estate legally described on Exhibit A attached hereto (“Real Estate”), with property identification number 19-32005-02-050, located in Hastings, Minnesota, including the portion of the improvements located therein as depicted on Exhibit B, and including any existing fixtures and any appurtenant parking areas, driveways and landscaped areas (collectively, the “Improvements”) (the Real Estate and Improvements are collectively referred to herein as the “Premises”).

**ARTICLE 2  
TERM**

Tenant shall have and hold the Premises for and during the term commencing November 1, 2021 (the “Commencement Date”) and terminating on April 30, 2023 (the “Term”), unless extended by the parties in writing. This Lease is terminable at will by Tenant upon vacation and written notice to Landlord with 30 days’ notice.

**ARTICLE 3  
BASE RENT**

As consideration for this Lease, Tenant shall pay to Landlord base rent in the amount of \$3,650 per month, commencing on the Commencement Date and then payable on the 1<sup>st</sup> day of each month thereafter through the Term of the Lease.

**ARTICLE 4  
ADDITIONAL RENT**

All amounts which Tenant is required to pay under the terms and provisions of this Lease, other than Base Rent in Article 3, including but not limited to the amounts payable by Tenant pursuant to Articles 9, 10, and 11 shall be considered as “Additional Rent”.

**ARTICLE 5  
USE OF PREMISES**

The Premises shall be used by Tenant for a cold storage location. Tenant agrees not to commit a nuisance in or upon the Premises so as to substantially interfere with the comfort and safety of others.

**ARTICLE 6  
TENANT'S ACCEPTANCE OF THE PREMISES/CONDITION**

Landlord will not be obligated to construct or install any improvements in or to the Premises as related to Tenant's Use of the Premises. Landlord makes no representation, covenant or warranty of any kind, character or nature concerning the Premises or otherwise, except that Landlord will have a Certificate of Occupancy from the City's Building Official prior to the Lease Term.

**ARTICLE 7  
FIXTURES, FURNITURE, AND EQUIPMENT**

Landlord agrees that all trade fixtures, furniture, equipment, or other personal property of whatever kind and nature kept or installed on the Premises by Tenant shall not become the property of the Landlord or a part of the realty no matter how affixed to the Premises and shall be removed by Tenant, on or before the termination of this Lease or any renewal.

**ARTICLE 8  
ALTERATIONS, TITLE TO AND REMOVAL OF IMPROVEMENTS**

Except for non-structural alterations or improvements that in the aggregate do not exceed \$5,000.00 during any calendar year period, Tenant may not without Landlord's prior written consent, remodel or make any alterations to the Premises.

Tenant shall have no authority to create or place any lien or encumbrance of any kind whatsoever upon or in any manner to bind the interest of the Landlord in the Premises, and Tenant covenants and agrees promptly to pay all sums legally due and payable by it on account of any labor performed on the Premises upon which any lien is or could be asserted.

**ARTICLE 9  
REPAIRS, MAINTENANCE AND SIGNAGE**

Tenant shall, at all times during the Term and any renewal thereof, at its own cost and expense, keep and maintain the Premises. If the improvements on the Premises are damaged or destroyed, Tenant may at its sole option and expense repair and restore the improvements or Tenant may terminate the Lease and vacate the Premises.

**ARTICLE 10  
REAL ESTATE TAXES AND SPECIAL ASSESSMENTS**

Landlord shall be responsible for the payment of all real estate taxes and current and future installments of special assessments covering the Premises during the Term and any renewal thereof.

**ARTICLE 11  
INSURANCE**

Tenant hereby covenants and agrees that it shall at all times during the Term and any renewal thereof, obtain and maintain and keep in force and effect the following minimum insurance:

- a. A comprehensive general liability insurance policy with a combined limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate, against claims for personal injury, death or property damage occurring in, on or about the Premises. Landlord shall be named as an additional insured. Any deductible amount shall be paid by Tenant.

Tenant shall deliver a certificate of insurance to the Landlord prior to taking possession.

**ARTICLE 12  
INDEMNIFICATION**

Tenant hereby agrees to indemnify, defend and save Landlord and Landlord's agents, employees, subtenants, assignees, licensees, contractors or invitees (collectively, "Landlord Indemnified Parties") harmless from all claims, actions, judgments, suits, losses, fines, penalties, demands, costs and expenses and liability whatsoever, including reasonable attorneys' fees, expert fees and court costs ("Tenant Indemnified Claims") on account of (i) any damage or liability occasioned in whole or in part by any use or occupancy of the Premises or by any act or omission of Tenant or any of Tenant's elected officials, officers, staff, employees, agents and representatives (collectively, "Tenant Parties"); or (ii) the use of the Premises by Tenant or any Tenant Parties and conduct of Tenant's business by Tenant or any Tenant Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any Tenant Parties, in or about the Premises. In case any action or proceeding is brought against Landlord or any Landlord Indemnified Parties solely by reason of any such Tenant Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel approved in writing by Landlord and Landlord's insurance carrier, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall not be liable for damage or injury occasioned by the negligence or fault of Landlord or its agents, contractors or employees. Tenant's indemnification obligation under this Article 12 shall survive the expiration or earlier termination of this Lease.

Landlord hereby agrees to indemnify, defend and save Tenant and Tenant's officers, trustees, directors, partners, beneficiaries, ground lessors, joint venturers, members, stockholders

or other principals or representatives (and their respective successors or assigned) (collectively, "Tenant Indemnified Parties") harmless from all claims, actions, judgments, suits, losses, fines, penalties, demands, costs and expenses and liability whatsoever, including reasonable attorneys' fees, expert fees and court costs ("Landlord Indemnified Claims") on account of any act or omission of Landlord or any of Landlord's agents or employees (collectively, "Landlord Parties"). In case any action or proceeding is brought against Tenant or any Tenant Indemnified Parties solely by reason of any such Landlord Indemnified Claims, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense by counsel reasonably acceptable to Landlord. Landlord shall not be liable for damage or injury occasioned by the negligence or fault of Tenant or its agents, contractors, employees, or invitees. Landlord's indemnification obligation under this Article 12 shall survive the expiration or earlier termination of this Lease.

### **ARTICLE 13 MECHANIC'S LIENS**

Tenant shall not suffer or permit any mechanic's liens to be filed against the Premises or any part thereof by reason of work, labor, services, or materials supplied or claimed to have been supplied to Tenant or anyone holding (or claiming to hold) the Premises or any part thereof through or under Tenant. If any such mechanic's liens or notice of lien shall at any time be filed against the Premises on account of an alleged debt of Tenant or any notice of lien by a party engaged by Tenant or Tenant's contractor or materialmen to work on the Premises, Tenant shall cause the same to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise within forty-five (45) days after the date of filing the same, or in the event such party disputes the validity of such lien, such party may deposit 110% of the amount claimed by the lien holder in escrow with a title insurance company, and/or the other party, or as prescribed by law as security against foreclosure of the lien. If Tenant fails to discharge such mechanic's lien within such period, then, in addition to any other right or remedy of Landlord hereunder, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court or by giving security or in such other manner as is or may be prescribed by law. Any amount paid by Landlord for any of the aforesaid purposes, and all reasonable legal and other expenses of such party, including reasonable attorneys' fees, in procuring the discharge of such lien, with all necessary disbursements in connection therewith, with interest thereon at the rate of five percent (5%) per annum from the date of payment shall be repaid by Tenant on demand. Any such amount owed by Tenant to Landlord shall become immediately due and payable by Tenant as Additional Rent with the next succeeding installment of monthly Base Rent which shall become due after such demand. Nothing herein contained shall imply any consent or agreement on the part of Landlord to subject Landlord's estate to liability under any mechanic's lien law.

**ARTICLE 14  
ASSIGNMENT AND SUBLETTING**

Tenant shall not sublet, sell, assign, mortgage, pledge, or in any manner transfer this Lease or any estate or interest thereunder, without the prior written consent of Landlord. Any assignment or subletting permitted by Landlord hereunder shall not release Tenant from any of its Lease obligations.

**ARTICLE 15  
DEFAULT AND REMEDIES OF LANDLORD**

If Tenant shall fail to promptly keep and perform any other obligations of this Lease, strictly in accordance with the terms of this Lease, and shall continue in default for a period of thirty (30) days after written notice thereof by Landlord of default and demand of performance (and Tenant is not diligently proceeding to cure a non-monetary default), then and in any such event and as often as any such event shall occur; and upon such default Landlord may declare the Term or any renewal thereof ended, and enter into said Premises with process of law and expel Tenant or any person occupying the same in or upon said Premises; such reentry shall not work a forfeiture of the rents to be paid nor affect the covenants to be performed by Tenant.

**ARTICLE 16  
COMPLIANCE WITH LAWS**

Tenant shall, at Tenant's sole cost and expense, comply with all federal, state, and local laws and regulations which may be applicable to the Premises. Tenant will observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Premises and the personal property therein.

**ARTICLE 17  
AMENDMENTS**

No waivers, alterations or modifications of this Lease or any agreements in connection therewith shall be valid unless in writing duly executed by both Landlord and Tenant herein.

**ARTICLE 18  
RECORDING**

This Lease shall not be recorded.

**ARTICLE 19  
SURRENDER OF PREMISES**

Tenant shall, after the last day of the Term or renewal Term, if applicable, or upon any earlier termination, surrender and yield the Premises to Landlord.

**ARTICLE 20  
SERVICE OF NOTICE**

Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless the same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, as follows:

If to Tenant at:           City of Hastings  
                                  Attn: City Administrator  
                                  101 – 4<sup>th</sup> Street East  
                                  Hastings, MN 55033

If to Landlord at:        Custom Sawdust LLC  
                                  Attn: Jerry Grotjohn, President  
                                  2699 Commerce Drive  
                                  Hastings, MN 55033

or to such other address as either party may designate by notice given from time to time in accordance with this Article 20. Any notice given in accordance with the provisions of this Article 20 shall be deemed to have been given as of the date occurring two (2) days after such notice shall have been placed for mailing with the United States Postal Service. The amounts payable by Tenant to Landlord hereunder shall be paid to the address designated by Landlord from time to time.

**ARTICLE 21  
HOLDING OVER**

In the event Tenant continues to occupy the Premises after the last day of the Term hereby created, or after the last day of any renewal Term, if applicable, Tenant shall pay all actual damages sustained by Landlord as a result of any such holdover.

**ARTICLE 22  
CAPTIONS**

The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such Articles of this Lease or in any way affect this Lease.

**ARTICLE 23  
INVALIDITY OF PROVISIONS**

If any term, covenant, condition or provision of this Lease or the application thereof, to any person or circumstance shall, at any time, or to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and enforceable to the



fullest extent permitted by law.

**ARTICLE 24  
LANDLORD'S ACCESS TO PREMISES**

Landlord shall have reasonable rights of access to the Premises after reasonable notice and during normal business hours for the purpose of inspecting the condition thereof from time to time throughout the Term of this Lease and any renewals thereof.

**ARTICLE 25  
ENTIRE AGREEMENT**

This Lease entered into between Landlord and Tenant as to the Premises supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the Premises and it contains all of the covenants, agreements and other obligations between the parties in respect to said Premises.

**ARTICLE 26  
LIABILITY OF LANDLORD**

Tenant's elected officials, officers, staff, employees, agents and representatives will have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease.

**ARTICLE 27  
GOVERNING LAW; VENUE**

This Lease will be governed by and construed according to the laws of the State of Minnesota. Any actions or proceedings arising under this Lease, in connection with the Premises will be venued in state or federal courts located in Dakota County, Minnesota, to the exclusion of all other venues. Tenant hereby expressly consents to the exercise of personal jurisdiction over Tenant by such courts.

**ARTICLE 28  
AUTHORITY**

Landlord and Tenant hereby represent and warrant that each individual executing this Lease on behalf of said entity is duly authorized to execute and deliver this Lease on behalf of said entity and that this Lease is binding upon said entity in accordance with its terms.

**ARTICLE 29  
BROKERS**

Each party warrants to the other that it has had no dealings with any broker or agent in connection with this Lease. Notwithstanding the foregoing, each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any

broker, finder, or other person, with whom the other party has or purportedly has dealt.

**ARTICLE 30  
TIME OF THE ESSENCE**

With respect to all acts of the Tenant and Landlord required under or pursuant to this Lease, time is of the essence.

**ARTICLE 31  
COUNTERPARTS**

This Lease may be executed in counterparts, each of which shall be deemed an original, but which taken together shall constitute one and the same instrument. Electronic or facsimile signatures shall be deemed sufficient to create a binding obligation hereunder and shall have the same force and effect as an original signature of such party.

**ARTICLE 32  
HAZARDOUS MATERIALS**

Tenant shall not keep or have in or on the Premises any article or thing which is deemed “hazardous” or “extra hazardous” by any responsible insurance company or under federal, state or local law, rule, regulation, code or ordinance except in compliance with all requirements of applicable law. To the extent caused by Tenant or its employees, agents, or invitees, Tenant shall indemnify and save harmless Landlord against all liabilities, damages, claims, fines, penalties, costs and other expenses, including, reasonable attorneys’ fees, which may be imposed upon, incurred by, or asserted against Landlord by reason of any use or condition of the Premises or any part thereof, including, without limitation, liability resulting from the use, storage, generation, or release of any “hazardous substance,” “hazardous waste,” “pollutant” or “contaminant” (as such terms may be now or hereafter defined under any applicable federal, state, or local statute, ordinance, or regulation, collectively referred to as “Hazardous Material”).

*[Remainder of page left blank intentionally; signature page follows.]*

**IN WITNESS WHEREOF**, the parties hereto have set their hands as of the day and year first above written.

**TENANT:**

City of Hastings,  
a Minnesota municipal corporation

By: \_\_\_\_\_  
Mary Fasbender  
Its: Mayor

By: \_\_\_\_\_  
Kelly Murtaugh  
Its: City Clerk

**LANDLORD:**

Custom Sawdust LLC,  
a Minnesota limited liability company

By: \_\_\_\_\_  
Jerry Grotjohn  
Its: President

**EXHIBIT A  
LEGAL DESCRIPTION**

Real property in Dakota County, Minnesota, legally described as follows:

Lot Five (5), Block Two (2), HASTINGS INDUSTRIAL PARK NO. 6, according to the recorded plat thereof.

Torrens Property

PID: 19-32005-02-050

Certificate of Title No. 181472

