

**CITY OF HASTINGS  
DEFERRED ASSESSMENT WAIVER AGREEMENT FOR  
PID: 19-32006-02-010, HASTINGS, MN 55033**

**THIS AGREEMENT FOR A DEFERRED ASSESSMENT WAIVER** (“Agreement”) is entered into and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (“Agreement Date”), by and between the City of Hastings, a Minnesota municipal corporation (“City”), and DREAM1 LLC, a Minnesota limited liability company (“Owner”).

**WITNESSETH:**

**WHEREAS**, the Owner is the fee simple owner of property legally described on the attached **Exhibit A**, located in Hastings, Dakota County, Minnesota (“Property”) that will be benefited by certain improvements; and

**WHEREAS**, the Owner will construct an approximately 20,000 square foot retail showroom and manufacturing warehouse and related improvements on the Property (collectively, the “Minimum Improvements”); and

**WHEREAS**, the fair market value of the Property is \$134,295.70, however, pursuant to a Development Agreement between HEDRA and the Owner, HEDRA sold the Property to the Owner for \$1.00 pursuant to its Land Credit Program, on condition that the Owner enter into this Deferred Assessment Waiver Agreement with the City under the terms and conditions herein, which includes the following elements:

1. The Owner shall complete the Minimum Improvements;
2. The Owner shall remain in business for at least five years from the date of completion of the Minimum Improvements;
3. Failure to comply with the above requirements shall result in a pro-rated repayment of the fair market value of the Property (less \$1.00), which is equivalent to the Deferred Assessment Amount.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants of each to the other contained in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

**ARTICLE I**  
**THE AGREEMENT**

**Section 1.01 Purpose.** The purpose of this Agreement is to memorialize the covenants and agreements between the Owner and the City with regard to the Property including the Owner's deferment of the assessment up to the Deferred Assessment Amount which constitutes an estimated benefit pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.3531.

**Section 1.02 Term.** The term of this Agreement shall commence on the Agreement Date and shall terminate upon the expiration of the Assessment Term or repayment or forgiveness of the Deferred Assessment Amount, whichever occurs first.

**Section 1.03 Survival.** Notwithstanding the termination of this Agreement pursuant to Section 1.02, the Owner's Covenants and Agreements contained in Section 3.01 and the City's Covenants and Agreements contained in Section 3.02 shall survive the termination of this Agreement.

**ARTICLE II**  
**DEFINITIONS**

**Section 2.01 Definitions.** The following are terms used in this Agreement. Their meanings as used in this Agreement shall be expressly indicated below, unless the context of this Agreement requires otherwise:

- (a) **Agreement:** This Agreement is to memorialize the covenants and agreements between the Owner and the City with regard to the Property and Deferred Assessment Amount including the assessment appeal waiver provided herein pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.3531.
- (b) **Agreement Date:** The date written in the first paragraph of the Agreement.
- (c) **Assessment Interest Rate:** The Deferred Assessment Amount shall accrue interest at a rate of three and one-half percent (3.5%) per year beginning on November 1, 2022. Only if not paid pursuant to 3.01(e), the Deferred Assessment Amount plus interest accrued as of the date stated in this section 2.01(c) shall be the amount assessed against the Property, less any applicable reduction provided in 3.01(e).
- (d) **Assessment Term:** The term of the special assessment shall be from the date that the interest accrual begins in 2.01(c) until the Deferred Assessment Amount is paid in full, is forgiven, or five (5) years after the Deferred Assessment Amount is certified or levied against the Property, whichever occurs first.

- (e) City: The City of Hastings, a Minnesota municipal corporation.
- (f) Deferred Assessment Amount: The Deferred Assessment Amount is the amount of One Hundred Thirty-Four Thousand Two Hundred Ninety-Five and 70/100 Dollars (\$134,295.70), which represents the fair market value of the Property as of the date of this Agreement, less \$1.00 for the purchase price of the Property, plus interest accrued beginning on the date in 2.01(c) through the date the assessment is certified or levied by the City.
- (g) HEDRA: The Hastings Economic Development and Redevelopment Authority, a Minnesota public body corporate and politic.
- (h) Owner: DREAM1 LLC, a Minnesota limited liability company.
- (i) Property: The real property identified and described on **Exhibit A**.

**ARTICLE III**  
**COVENANTS AND AGREEMENTS**

**Section 3.01 Covenants and Agreements of the Owner.** The Owner covenants and agrees with the City that:

- (a) Assessment Appeal Waiver: Owner hereby authorizes the City to certify or levy a special assessment against the Property up to the Deferred Assessment Amount as provided in Section 3.02. The Owner hereby waives all rights to assessment notices, hearings and appeals, and all other rights pursuant to Minn. Stat. § 429.061, § 429.071 and § 429.081 for the special assessment against the Property up to the Deferred Assessment Amount. The Owner hereby waives any and all procedural and substantive objections to the assessment up to the Deferred Assessment Amount against the Property, including, but not limited to, notice and hearing requirements and any claim that any or all of the Deferred Assessment Amount against the Property exceeds the benefit to the Property. The Owner acknowledges and agrees that the benefit to the Property does in fact equal or exceed the Deferred Assessment Amount. The City and the Owner acknowledge and agree that the Owner's waiver of assessment appeal rights pursuant to Minnesota Statutes, Chapter 429, is capped at the Deferred Assessment Amount by operation of Minn. Stat. § 462.3531. The City and the Owner acknowledge and agree that the Owner may appeal any special assessment above the Deferred Assessment Amount.
- (b) Owner's Covenant Not to Sue the City: Owner hereby covenants with the City not to appeal or sue the City for a court to set aside, reduce, repeal, or invalidate the assessment, or for other relief from the payment of the City's assessment up to the Deferred Assessment Amount against the Property.
- (c) Owner's Covenant that Owner is the Property Fee Owner: Owner hereby covenants and warrants with the City that Owner is seized in fee of the Property and has good right to

enter into this Agreement with the City.

- (d) Owner's Agreement to Assessment Amount: Owner understands and agrees that the fair market value of the Property as of the date of this Agreement equals or exceeds the Deferred Assessment Amount.
- (e) When Payment is Due: Following completion of the Minimum Improvements, the Owner agrees to own the Property and remain in operation at the Property for a period of five (5) years from the date of completion of the Minimum Improvements. If the Owner fails to comply with this requirement, the City shall certify/levy all or a portion of the Deferred Assessment Amount on a prorated basis, based on the portion of the five-year operation period elapsed as of the date of default.

**Section 3.02 Covenants and Agreements of the City.** The City covenants and agrees with the Owner that:

- (a) Certification/Levy of Deferred Assessment Amount: The City agrees that it will only certify/levy the Deferred Assessment Amount against the Property pursuant to Sections 3.01(e) and 4.02.
- (b) Forgiveness of Deferred Assessment Amount: If Owner performs pursuant to all terms and conditions of this Agreement, the City agrees that it will not certify/levy the Deferred Assessment Amount against the Property and shall record a release and termination of this Agreement after the expiration of the Assessment Term.
- (c) City Recording of this Agreement: The City will record this Agreement against the Property.
- (d) Prepayment of Assessment: The City agrees the Owner may prepay some or all of the City's Deferred Assessment Amount against the Property with no penalty pursuant to Minn. Stat. § 429.061.

#### **ARTICLE IV** **DEFAULT**

**Section 4.01 Event of Default – Sale to Third Party.** If, prior to the date that is five (5) years from the date of completion of the Minimum Improvements, the Property is sold to a third party without prior written consent by HEDRA for such sale, the Deferred Assessment Amount, plus interest as stated in Section 2.01(c) will be due and payable in full at the closing of the sale to the third party, without reduction for the number of years the Owner remained in operation at the Property. If the Deferred Assessment Amount plus interest is not paid at the closing to the third party, the City shall be able to pursue all remedies and sanctions available at law and in equity against the Owner or subsequent purchaser.

**Section 4.02 Event of Default – Failure to Construct Minimum Improvements.** If Owner fails to complete construction of the Minimum Improvements by November 1, 2022, the



**Section 5.04 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 5.05 Amendments, Changes and Modifications.** This Agreement may be amended or any of its terms modified or changed only by a written amendment authorized and executed by the City and the Owner.

**Section 5.06 Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 5.07 Entire Agreement.** This Agreement shall constitute the entire agreement between the parties and shall supersede all prior oral or written negotiations.

**[remainder of page intentionally blank]**







## **EXHIBIT A**

### **Legal Description of Property**

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

Lot 1, Block 2, HASTINGS INDUSTRIAL PARK NO. 7, according to the recorded plat thereof.

*Abstract Property*

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