

BUSINESS SUBSIDY AGREEMENT

THIS AGREEMENT (“Agreement”) made this ____ day of _____, 2021, by and between the Hastings Economic Development and Redevelopment Authority, a Minnesota public body corporate and politic, 101 4th Street East, Hastings, Minnesota (“HEDRA”) and Custom Sawdust, LLC d/b/a Custom Sawdust, a Minnesota limited liability company, 2699 Commerce Drive (“Custom Sawdust”).

RECITALS

WHEREAS, the City of Hastings (“City”) has long desired to improve the function and appearance of its community through economic development, and has invested substantial resources toward that goal; and

WHEREAS, the Hastings City Council established the HEDRA in 2009 in order to advance these objectives; and

WHEREAS, the HEDRA adopted criteria for awarding business subsidies, pursuant to the Business Subsidies Act, Minn. Stat., Sections 116J.993 to 116J.995 (“Business Subsidy Act”); and

WHEREAS, Custom Sawdust owns the property located in Hastings legally described as:
Lot Five (5), Block Two (2), HASTINGS INDUSTRIAL PARK NO. 6, according to the recorded plat thereof.

WHEREAS, the HEDRA believes the proposed Project would be desirable for the City; and

WHEREAS, the Project meets all criteria for awarding a Business Subsidy established by the HEDRA Policy on Business Subsidies and due to the estimated cost of the Project, it is not financially feasible without public assistance.

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, and in consideration of the covenants and agreements made herein, Custom Sawdust and the HEDRA hereby agree as follows:

AGREEMENT

1. The Business Subsidy comprises of a forgivable loan in an amount up to forty thousand four hundred dollars (\$40,400). The forgivable loan shall off-set the Deferred Assessment Agreement, attached hereto as Exhibit A.

2. The public purposes of the Business Subsidy are as follows:
 - a. Promote the economic and commercial development of the City;
 - b. Preserve the local tax base and improve the general economy and vitality of the City;
 - c. Promote the health, safety and welfare of the residents of the City; and
 - d. Attract, retain, rehabilitate and preserve commercial and industrial facilities.
3. The goals for the Business Subsidy are to secure timely development and maintain the Property as an industrial business for at least five (5) years.
4. Custom Sawdust will construct the Project pursuant to all approvals or licenses required by the City, with a completion date of June 30, 2022 (“Completion Date”).
5. Upon completion of the Project, Custom Sawdust, its tenants, permitted successors or assigns, will continuously occupy the Property for at least five (5) years, except in the event of unforeseeable casualty, in which event, Custom Sawdust shall rebuild and reopen as soon as commercially reasonable.
6. If Custom Sawdust complies with the terms and conditions of this Agreement, the Business Subsidy will be forgiven five (5) years after the Completion Date. If Custom Sawdust does not comply with the terms and conditions of this Agreement, Custom Sawdust shall pay back a portion of the Business Subsidy on a prorated basis, with interest, based on the portion of the five-year operation period elapsed as of the date of default.
7. Custom Sawdust must submit to HEDRA a written report regarding Business Subsidy goals and results by no later than March 1st of each year, commencing March 1st of the year following completion of the improvements and continuing until the later of the date that the goals are met; or thirty (30) days after expiration of the five-year period; or if the goals are not met, then the date the Business Subsidy is repaid. The report must comply with Section 116J.994 subd. 7 of the Business Subsidy Act. HEDRA will provide information to Custom Sawdust regarding the required forms. If Custom Sawdust fails to timely file any report required under this section, HEDRA will send Custom Sawdust a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, Custom Sawdust fails to provide a report, Custom Sawdust must pay HEDRA a penalty of \$100 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this section is \$1,000.
8. The parties agree that this Agreement shall be construed pursuant to Minnesota law and any disputes shall be venued in Dakota County, Minnesota.

9. Notices to the parties shall be sent as follows:

If to HEDRA: Hastings Economic Development and
Redevelopment Authority
Attn: John Hinzman
101 4th Street East
Hastings, MN 55033

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

10. This Agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

11. This Agreement shall only be amended by written agreement approved by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their authorized representatives as of the date first written above.

[THE REMAINDER OF THIS PAGE INTENTIONALLY BLANK]

IN AGREEMENT, the parties hereto have hereunto set their hands as of the Effective Date.

**HEDRA:
HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY**

By _____
Dennis Peine
Its President

By _____
John Hinzman
Its Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Dennis Peine and John Hinzman, the President and Director respectively, of the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of HEDRA.

Notary Public

EXHIBIT A
DEFERRED ASSESSMENT WAIVER AGREEMENT

CITY OF HASTINGS
DEFERRED ASSESSMENT WAIVER AGREEMENT FOR
PID: 19-32005-02-050, 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 Custom Sawdust 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 a building one building that will include two large garage stalls and an attached office, totaling at least 4,900 square feet on the Property (the “Improvements”); and

WHEREAS, the Owner has requested that the City assess a portion of the construction costs of the Improvements against the Property; and

WHEREAS, as part of the consideration for the benefit to the City, the City will agree to defer the assessments for the Improvements for a period of time, but no later than December 1, 2026; and

WHEREAS, in the event that the Owner fails to pay the Deferred Assessment Amount on or before December 1, 2026, the Owner is willing to agree to the levy of the full value of the Deferred Assessment Amount immediately against the Property for the Assessment Term with interest accrual at the Assessment Interest Rate; and

WHEREAS, the Owner is willing to waive any assessment appeal rights up to the full value of the Deferred Assessment Amount which constitutes an estimated benefit of the Improvements pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.353.

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:

EXHIBIT A
DEFERRED ASSESSMENT WAIVER AGREEMENT
(CONTINUED)

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 and the Improvements including the Owner's deferment of the assessment up to the Deferred Assessment Amount which constitutes an estimated benefit of the Improvements 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 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 to memorialize the covenants and agreements between the Owner and the City with regard to the Property, Deferred Assessment Amount and the Improvements 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.

Assessment Interest Rate: Only if not paid pursuant to 3.01(e), the Deferred Assessment Amount shall accrue interest at a rate of three and one-half percent (3.5%) per year for the Assessment Term beginning either by December 1 of the same year after the full value of the Improvements is established by the Dakota County Assessor's Office, or by December 1, 2026, whichever occurs first. By way of illustration, if the Improvements are completed in October of 2021, and the Assessor's Office values the Improvements on May 1, 2022, then any Deferred Assessment Amount would be levied on December 1, 2022 and interest would begin to accrue as of that date. Regardless of when the Improvements are completed, in no event shall the Deferred Assessment Amount be levied later than December 1, 2026.

EXHIBIT A
DEFERRED ASSESSMENT WAIVER AGREEMENT
(CONTINUED)

- (c) Assessment Term: Only if not paid pursuant to 3.01(e), 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, or five (5) years after the Deferred Assessment Amount is levied against the Property.
- (d) City: The City of Hastings, a Minnesota municipal corporation.
- (e) Deferred Assessment Amount: The Deferred Assessment Amount is the amount of Eighty-Nine Thousand Two Hundred Eighteen and 59/100 Dollars (\$89,218.59), or as it may be reduced to Section 3.01(e).
- (f) Owner: Custom Sawdust LLC, a Minnesota limited liability company.
- (g) 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 defer a special assessment against the Property up to the Deferred Assessment Amount for the Improvements. 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 for the Improvements. The Owner acknowledges and agrees that the benefit of the Improvements 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 for the Improvements constructed by the City.

EXHIBIT A
DEFERRED ASSESSMENT WAIVER AGREEMENT
(CONTINUED)

- (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 value of the Improvements will increase the market value of the Property in an amount that equals or exceeds the Deferred Assessment Amount.
- (e) When Payment is Due: Following completion of the Improvements, the Deferred Assessment Amount owed by the Owner to the City shall be reduced by an amount referred to as the "Construction Credit." The Construction Credit shall be equal to the taxed assessed value as determined by the Dakota County Assessor's Office for the fair market value of the Improvements, exclusive of the land value, divided by 10 plus a credit of \$5,400 if 3 jobs are retained as of the date the Construction Credit is calculated. If the Deferred Assessment Amount exceeds the Construction Credit, then the balance of the Deferred Assessment Amount is due and owing and if not paid by December 1 of the year in which the calculation is made, the Deferred Assessment Amount shall be assessed against the Property.

By way of illustration only: If the Dakota County Assessor's Office values the Improvements at \$350,000, then:

$$\begin{aligned} \$350,000/10 &= \$35,000 + \$5,400 = \$40,400 \text{ Construction Credit} \\ \$89,218.59 - \$40,400 &= \underline{\$48,818.59} \text{ Balance due on Deferred Assessment Amount} \end{aligned}$$

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

- (a) Deferred Assessment Amount: The City agrees that it will only certify/levy the Deferred Assessment Amount against the Property if the Owner does not pay the Deferred Assessment Amount when due according to Section 3.01(e) and then, only up to the Deferred Assessment Amount for the Improvements pursuant to this Agreement.
- (b) City Recording of this Agreement: The City will record this Agreement against the Property.
- (c) Prepayment of Assessment: The City agrees the Owner may prepay some or all of the City's Deferred Assessment Amount against the Property for the Improvements with no penalty pursuant to Minn. Stat. § 429.061. In the event the Property is sold to a third party prior to the Deferred Assessment Amount being paid in full, the Deferred Assessment Amount shall be calculated as of the date of closing on the sale using the method of calculation provided in Section 3.01(e) and must be paid in full at closing.

EXHIBIT A
DEFERRED ASSESSMENT WAIVER AGREEMENT
(CONTINUED)

ARTICLE IV
DEFAULT

Section 4.01 Default. If a party to this Agreement materially defaults in the due and timely performance of any of its covenants, or agreements hereunder, the other party(s) may give notice of default of this Agreement. The notice shall specify with particularity the default or defaults on which the notice is based. The notice shall specify a ten (10) day cure period within which the specified default or defaults must be cured. If the specified defaults are not cured within the cure period, the other party(s) may pursue all remedies and sanctions available at law and in equity, including specific performance.

Section 4.02 Attorneys' Fees, Costs and Expenses. The Owner agrees that after execution of this Agreement, if it challenges the validity of the Assessment up to the Deferred Assessment Amount in any way, then Owner shall pay the City the amount of the City's assessment up to the Deferred Assessment Amount with accrued interest beginning as stated in Section 2.01(c), together with the City's attorneys' fees, costs and expenses to defend the assessment by the City up to the Deferred Assessment Amount pursuant to this Agreement. The Owner acknowledges and agrees that the Owner would be unjustly enriched if the City's assessment up to the Deferred Assessment Amount pursuant to this Agreement was set aside, reduced, repealed or invalidated by a court with jurisdiction over the Property. The Owner agrees that the court with jurisdiction over the Property shall award the City the assessment up to the Deferred Assessment Amount with accrued interest together with the City's attorneys' fees, costs and expenses for breach of the Owner's covenant not to appeal or sue the City pursuant to Article III, Section 3.01(b).

ARTICLE V
GENERAL PROVISIONS

Section 5.01 Notices. All notices, requests, demands or other communications required or permitted by this Agreement shall be in writing and delivery shall be deemed to be sufficient if delivered personally or by registered or certified mail, return receipt accepted, postage prepaid, addressed as follows:

If to the City:

City of Hastings
Attention: City Administrator
101 4th Street East
Hastings, MN 55033

EXHIBIT A
DEFERRED ASSESSMENT WAIVER AGREEMENT
(CONTINUED)

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

Section 5.02 Non-Assignability. Neither the City nor the Owner shall assign any interest in this Agreement nor shall either party transfer any interest in the same without the prior written consent of the other party.

Section 5.03 Binding Effect. This Agreement and the terms, conditions and covenants contained herein and the transaction contemplated hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, personal representatives, and permitted assigns. This Agreement shall further be binding on subsequent purchasers of the Property and shall run with the Property herein described.

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.

IN WITNESS WHEREOF, the City and the Owner have caused this Agreement to be executed by their duly authorized representatives.

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**EXHIBIT A
DEFERRED ASSESSMENT WAIVER AGREEMENT
(CONTINUED)**

**OWNER:
CUSTOM SAWDUST LLC**

By: _____
Jerry Grotjohn
President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Jerry Grotjohn, the President of Custom Sawdust LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

**THIS INSTRUMENT DRAFTED BY AND
AFTER RECORDING, PLEASE RETURN TO:**

Korine L. Land, #262432
LeVander, Gillen, & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A

Legal Description of Property

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. 110570