

## PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between the **SWEENEY ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “EDC”), and **CECIL JOE STARK SAWMILL & LOGGING, INC.**, a Texas corporation (hereinafter referred to as “Developer”), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, the EDC is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

**WHEREAS**, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities”; and

**WHEREAS**, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

**WHEREAS**, Section 505.158 of the Texas Local Government Code provides that “[f]or a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, “project” also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation’s board of directors to promote new or expanded business development.” Further, the statute provides that “[a] Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation’s authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings”; and

**WHEREAS**, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless EDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by EDC’s investment; a schedule of capital investments to be made as consideration for any direct incentives provided by EDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

**WHEREAS**, Developer has applied to EDC for economic development assistance necessary to construct and operate a commercial office and retail establishment to be located on an 16.93 acre tract of land being out of a 67.288 acre tract being located in the Charles Breen League, Abstract No. 46 , City of Sweeny, Brazoria County, Texas (hereinafter referred to as the “Property”); and

**WHEREAS**, the EDC’s Board of Directors have determined the economic development assistance to be provided to Developer pursuant to this Agreement is consistent and meets the definition of “project” as that term is defined in Sections 501.101, 501.103, and 505.158 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code; and

**WHEREAS**, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Sweeny, Texas, to approve all programs and expenditures of the EDC, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the EDC and Developer agree as follows:

**SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

**SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until **December 31, 2029**, unless terminated sooner under the provisions hereof.

**SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **Developer.** The word “Developer” means Cecil Joe Stark Sawmill & Logging, Inc., a Texas corporation, its successors and assigns, whose address for the purposes of this

Agreement is P.O. Box 1207, West Columbia, Texas 77486.

- (d) **EDC.** The term “EDC” means the Sweeny Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 111 W. 3<sup>rd</sup> Street, Sweeny, Texas 77480.
- (e) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the Developer and the EDC.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (g) **Full-Time Equivalent Employment Position.** The words “Full-Time Equivalent Employment Position” or “Full-Time Equivalent Employment Positions” mean and include a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work averaged over a twelve (12) month period.
- (h) **Property.** The word “Property” means the approximately 16.93 acre tract of land being out of a 67.288 acre tract being located in the Charles Breen League, Abstract No. 46, City of Sweeny, Brazoria County, Texas, and as generally depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of the construction of an office and retail building located on the Property, as generally depicted in *Exhibit B* of this Agreement, which is attached hereto and incorporated herein for all purposes, and those expenses which meet the definition of “project” as that term is defined in Sections 501.101, 501.103, and 505.158 of the Act, and meet the definition of “cost” as that term is defined in Section 501.152 of the Act.
- (j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

Developer covenants and agrees with EDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Qualified Expenditures.** Developer covenants and agrees to commence construction of the Qualified Expenditures within 120 days of the EDC’s completion of the road and utilities leading to the Property. Further, Developer covenants and agrees to complete construction of an office and retail building within twelve (12) months of the City of Sweeny’s completion of the road and utilities leading to the Property.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be

obtained within twelve (12) months of EDC's completion of the road and utilities leading to the Property, a certificate of occupancy from the City of Sweeny, Texas, for an office and retail space located on the Property.

(c) **Operate Office and Retail Facility.** Developer covenants and agrees to maintain and operate an office and retail space located on the Property within twelve (12) months of the EDC's completion of the road and utilities leading to the Property, and during the Term of this Agreement.

(d) **Job Creation and Retention.** Developer covenants and agrees to employ and maintain a minimum Full-Time Equivalent Employment Positions working at the Property as follows:

- (1) a minimum of twenty-four (24) Full-Time Equivalent Employment Positions by **July 1, 2024;**
- (2) a minimum of twenty-eight (28) Full-Time Equivalent Employment Positions by **July 1, 2025;**
- (3) a minimum of thirty (30) Full-Time Equivalent Employment Positions by **July 1, 2026;**
- (4) a minimum of thirty-two (32) Full-Time Equivalent Employment Positions by **July 1, 2027;**
- (5) a minimum of thirty-four (34) Full-Time Equivalent Employment Positions by **July 1, 2028; and**
- (6) a minimum of thirty-six (36) Full-Time Equivalent Employment Positions by **July 1, 2028.**

Further, Developer covenants and agrees beginning on **July 1, 2024**, and during the Term of this Agreement, Developer shall deliver to EDC an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the "Annual Compliance Verification"). The Developer covenants and agrees beginning on **July 1, 2024**, and annually thereafter during the Term of this Agreement, there will be a total of **six (6)** Annual Compliance Verifications due and submitted to the EDC covering the Full-Time Equivalent Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.

(e) **Acquisition of the Property.** Developer covenants and agrees to acquire the Property from the EDC within ninety (90) days of the Effective Date of this Agreement or consistent with the terms of a real estate sales contract executed by and between the Developer and the EDC. The Developer covenants and agrees the Property has a value of **Three Hundred Four Thousand Seven Hundred Forty and No/100 Dollars (\$304,740.00)**. Developer covenants and agrees to execute a deed of trust lien or other lien for the Property in a form acceptable to the EDC at the time of closing on the Property.

- (f) **Performance Conditions.** Developer agrees to make, execute and deliver to EDC such other promissory notes, instruments, documents and other agreements as EDC or its attorneys may reasonably request to evidence this Agreement.
- (g) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and EDC.

#### SECTION 5. AFFIRMATIVE COVENANTS OF EDC.

EDC covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Conveyance of the Property.** The EDC covenants and agrees to convey to the Developer good and indefeasible fee simple title to the Property, free and clear of any liens or other encumbrances, by special warranty deed within ninety (90) days of the Effective Date of this Agreement or consistent with the terms of a real estate sales contract executed by and between the Developer and the EDC.
- (b) **Performance.** EDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and EDC.

#### SECTION 6. CESSATION OF ADVANCES.

If the EDC has made any commitment to provide any financial assistance to Developer, whether under this Agreement or under any other agreement, the EDC shall have no obligation to advance or disburse the financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

#### SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or EDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or EDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and EDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to EDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City of Sweeny, Texas, to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from EDC and/or Brazoria County Central Appraisal District is an Event of Default.

## **SECTION 8. EFFECT OF AN EVENT OF DEFAULT.**

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate or maintain a cause of action for damages caused by the event(s) of default. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the Developer covenants and agrees to immediately reconvey the Property to the EDC free and clear of all liens or other encumbrances.

## **SECTION 9. INDEMNIFICATION.**

**Developer shall indemnify, save, and hold harmless EDC, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnitee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of EDC's financial assistance by Developer or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which EDC is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of EDC or Developer to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnitee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to EDC with respect to any of the foregoing arising out of the gross negligence or willful misconduct of EDC or the breach by EDC of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnitee, such Indemnitee shall promptly notify Developer, but the failure to so promptly notify Developer shall not affect Developer's obligations under this Section unless such failure materially prejudices Developer's right to participate in the contest of such**

**claim, demand, action or cause of action, as hereinafter provided. If requested by Developer in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any Indemnitee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.**

#### **SECTION 10. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Brazoria County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Brazoria County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. EDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Filing.** This Agreement shall be filed in the deed records of Brazoria County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of the Developer.

(h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the “Notice”) is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to EDC: Sweeny Economic Development Corporation  
111 W. 3<sup>rd</sup> Street  
Sweeny, Texas 77480  
Attn: Michelle Medina, Executive Director  
Telephone: (979) 548-2894

if to Developer: Cecil Joe Stark Sawmill & Logging, Inc.  
P.O. Box 1207  
West Columbia, Texas 77486  
Attn: Cecil Joe Stark, President  
Telephone: \_\_\_\_\_

(i) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

(j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

(k) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120<sup>th</sup> day after the date the EDC notifies Developer of the violation.

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**DEVELOPER:**

**CECIL JOE STARK SAWMILL  
& LOGGING, INC.,**  
a Texas corporation,

By: \_\_\_\_\_  
Cecil Joe Stark, President

Date Signed: \_\_\_\_\_

**STATE OF TEXAS**

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**COUNTY OF BRAZORIA**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023,  
by Cecil Joe Stark, President of Cecil Joe Stark Sawmill & Logging, Inc., a Texas corporation, on  
behalf of said Texas corporation.

\_\_\_\_\_  
Notary Public, State of Texas

***Exhibit A***

Legal Description and/or Depiction of the Property