

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “**Agreement**”), dated for purposes of reference as of June 13, 2024, is by and between the **FAYETTE COUNTY DEVELOPMENT AUTHORITY** (the “**Authority**”), a public body corporate and politic created and existing under the laws of the State of Georgia (the “**State**”) and **HOSHIZAKI AMERICA, INC.** (the “**Company**”), a Georgia corporation, each a “**Party**” and collectively the “**Parties**”.

WHEREAS, the Authority is a development authority and public body corporate and politic duly created by the Development Authorities Law of the State of Georgia, O.C.G.A. § 36-62-1, *et seq.* (the “**Act**”); and

WHEREAS, the Act provides that the Authority is created to develop and promote trade, commerce, industry, and employment opportunities for the public good and the general welfare within Fayette County, Georgia (the “**County**”) and is authorized by the Act to issue its revenue bonds to acquire, construct and install land, buildings and related personal property, which revenue bonds are required to be validated pursuant to the provisions of the Revenue Bond Law (O.C.G.A. § 36-82-60, *et seq.*); and

WHEREAS, the Company has previously acquired, constructed and installed a capital project in the County consisting of certain land and certain improvements located thereon which is currently being used as a manufacturing facility for the Company (the “**Existing Facilities**”); and

WHEREAS, the Company desires to acquire, construct and install an expansion to the Existing Facilities and to acquire certain additional equipment and fixtures located thereat (collectively, the “**2024 Project**”); and

WHEREAS, the Company has estimated that the acquisition, construction and equipping of the 2024 Project will commence on or before December 31, 2024 and shall be completed on or before December 31, 2025; and

WHEREAS, the Authority has agreed to issue its taxable revenue bonds (collectively, the “**Project Bonds**”) to acquire the Existing Facilities and acquire, construct and install the 2024 Project; and

WHEREAS, the Project Bonds may be issued in any principal amount; provided, however, the maximum aggregate principal amount of the Project Bonds shall not exceed \$46,500,000; and

WHEREAS, the 2024 Project is expected to create new full-time private sector jobs in the County, and will otherwise have a favorable impact upon the economy of the County and the State; and

WHEREAS, in order to induce the Company to locate and maintain their operations in the County, ad valorem property tax savings (the “**Ad Valorem Property Tax Savings**”) will be provided for the 2024 Project by the Authority, as provided below, with attendant investment on the part of the Company, and job creation and retention on the part of the Company all of which constitutes valuable, non-cash consideration to the Authority and the citizens of the County and of the State; and

WHEREAS, the Authority and Company acknowledge that the *Ad Valorem* Property Tax Savings provided for in this Agreement serve a public purpose through the job creation and investment generation represented by the 2024 Project and the provision of such *Ad Valorem* Property Tax Savings does not violate the prohibition in the Georgia Constitution on the payment by public bodies of gratuities to private sector persons; and

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the Parties hereto agree as follows:

1. THE EXISTING FACILITIES AND 2024 PROJECT.

1.1. Existing Facilities. The Existing Facilities consist of approximately 45.59 acres of land in the County which is described in Schedule 1.1 attached hereto (and by reference made a part hereof) (the “**Project Site**”) and certain improvements located thereon including, without limitation, a manufacturing facility located at 618 Hwy 74 South, Peachtree City, 30269. In order to effect the tax incentives for the 2024 Project, the Existing Facilities shall be owned by the Authority and leased to the Company under the terms of a separate Lease Agreement (the “**Bond Lease**”) to be entered into between the Authority and the Company. The current fair market value of the Existing Facilities as shown on the most recent tax bill issued to the Company is \$14,471,050.

1.2. The 2024 Project. The 2024 Project consists of the expansion of the Existing Facilities and the acquisition and installation of new equipment thereat for lease to and operation by the Company. As used herein, references to the “**2024 Project**” includes the 2024 Improvements (as defined below) and the 2024 Equipment (as defined below), as the same may exist from time to time.

(a) 2024 Improvements. The “**2024 Improvements**” are to consist of the acquisition, construction and installation by the Company of certain improvements to the Existing Facilities, as shown on the site plan attached hereto as Schedule 1.2 (the “**Site Plan**”), which 2024 Improvements are intended to be financed with the proceeds of the Project Bonds and leased to the Company under the Bond Lease. The estimated cost of the permanent improvements to be made to the Existing Facilities is \$24,000,000. The Company shall be responsible for the design of the 2024 Improvements. The Bond Lease shall provide that the Company, as principal and not as agent of the Authority, shall acquire, construct and install the 2024 Improvements and that title to the 2024 Improvements shall vest in the Authority as the same are constructed. The 2024 Improvements shall be acquired, constructed and installed in substantial compliance with applicable laws, including applicable zoning laws, building codes, environmental laws and other restrictions. The parties understand that this Agreement is not subject to the

Georgia Local Government Public Works Construction Law (the “**Construction Law**”), and do not intend for it to be subject thereto.

(b) 2024 Equipment. The “**2024 Equipment**” consists of items of trade fixtures, machinery, equipment, furniture and furnishings proposed herein to be financed with the Project Bonds and to be owned by the Authority and leased to the Company under the Bond Lease. The Bond Lease will provide that the Company shall be responsible for the acquisition and installation of the 2024 Equipment and for conveying the same to the Authority from time to time by one or more bills of sale. The 2024 Equipment included in the 2024 Project shall be specifically listed on such bills of sale conveying the same to the Authority. The estimated cost of the 2024 Equipment is up to \$6,000,000. Notwithstanding the foregoing, the Company shall have the right to sell, convey, transfer and encumber the 2024 Equipment in its sole discretion and the Authority shall execute any instruments, releases or other documents to effectuate such sale, conveyance, transfer or encumbrance by the Company with respect to the 2024 Equipment.

1.3. Total Project Costs. “**Total Project Costs**” include all reasonable costs, fees and expenses incurred by the Company in connection with the 2024 Project and the issuance of the Project Bonds. The Company will be responsible for any costs of or related to the 2024 Project (including, without limitation, those related to any change orders or cost overruns) to the extent that proceeds of the Project Bonds are not available or are not sufficient to pay such costs.

1.4. Closing. As used herein, the “**Closing**” is the event at which the Project Bonds are issued and the other transactions contemplated herein are consummated. References herein to a “**Closing Condition**” are to the optional right of a Party hereto, based on a Closing Condition, to exercise a right provided herein in its favor and to avoid the Closing and terminate this Agreement as provided in Sections 5.4, 5.5 and 5.6, respectively, below. In connection with the issuance of the Project Bonds, the signatories hereto may also enter into an Economic Development Agreement (the “**EDA**”) to reflect any amendments hereto agreed to prior to Closing (or to reflect that there are no such amendments).

1.5. Indemnity by the Company. The Company shall indemnify, hold harmless and defend the Authority, and their respective officials, members, officers, employees and representatives from and against any and all loss, liabilities and claims (including, without limitation, liens and encumbrances resulting from construction and installation activities) that may arise out of or relate to: (a) any act or omission by or attributable to the Company or its vendors, contractors or subcontractors, agents, employees or representatives, related to the 2024 Project; or (b) this transaction, including the Project Bonds or the issuance thereof, or the ownership or operation of the 2024 Project. The indemnity contained in this Section 1.4 shall not apply in the case of any particular indemnitee to any claim, loss or liability which is the result of the gross negligence or willful misconduct of such indemnitee. Said indemnity shall survive the expiration or earlier termination of this Agreement, but at Closing shall be superseded (provided, such supersession shall not affect any accrued liability hereunder) by the indemnities in the Definitive Documents (as defined herein).

2. FINANCING OF THE 2024 PROJECT.

2.1. Project Bonds. In order to establish the bond-financed sale-leaseback structure that is necessary for the provision of certain of the incentives contemplated herein, including, without limitation, *ad valorem* property tax savings for the 2024 Project, the Authority will issue the Project Bonds to the Company. The Authority will hold legal title to the Existing Facilities and the 2024 Project. The Bond Lease and related purchase option, described below, will evidence the Company's beneficial ownership of the Existing Facilities and the 2024 Project. The Company will acquire legal title to the Existing Facilities and the 2024 Project as provided herein.

2.2. Maximum Principal Amount of Project Bonds. It is anticipated that the principal amount of the Project Bonds shall in the aggregate accommodate the acquisition cost of the Existing Facilities and the Total Project Costs for the 2024 Project; provided, however, the aggregate principal amount of the Project Bonds shall not exceed \$46,500,000.

2.3. Transaction Costs for Project Bonds. The Company shall be responsible for all transactional costs of the issuance of the Project Bonds, and other matters related thereto, provided that such costs shall be subject to the Company's approval, which shall not be unreasonably withheld. Subject to any applicable limits of the federal tax law, cash proceeds of the Project Bonds, if any are available for such purpose, may be used to pay such costs or to reimburse the Company for transaction costs previously paid by it. Such transaction costs include, without limitation: (i) the court costs relating to validation of the Project Bonds and recording and filing fees; (ii) the Authority's financing fee equal to $\frac{1}{4}$ of 1% of the par amount of the Project Bonds, payable one time at Closing; (iii) the legal fees and expenses of counsel to the Authority and Bond Counsel in an amount equal to \$122,500 and (iv) trustee fees. In addition, the Authority will charge an annual administrative fee equal to \$5,000 for each year the Project Bonds are outstanding.

2.4. Tax Status of the Project Bonds. The interest on Project Bonds issued to the Company will not be exempt from federal income taxation. Whether or not the interest on any other series of the Project Bonds will be exempt from federal income taxation shall be as determined by the federal income tax law.

2.5. Roles of Counsel. The law firm of Glover & Davis P.A. shall serve as counsel to the Authority, and its fees and expenses will be paid by the Company as specifically provided in Section 2.3 hereof. The law firm of Gray Pannell & Woodward LLP shall serve as the Bond Counsel in connection with the issuance of the Project Bonds and this Agreement, and its fees and expenses will be paid by the Company as specifically provided in Section 2.3 hereof. The law firm of Warner, Hooper and Ramsey, P.C. shall serve as counsel to the Company, and its fees and expenses will be paid by the Company.

2.6. Repayment of the Project Bonds. The Company shall be responsible for the repayment of the Project Bonds. Without limitation, the Project Bonds shall not be a general obligation of the Authority, but shall be a special and limited obligation payable solely from the payments received under the Bond Lease and other pledged security. No public body, including the Authority and the County, shall have any obligation or liability for repayment of the Project Bonds.

2.7. The Bond Lease. The Authority and the Company shall enter into the Bond Lease at the Closing. Pursuant to the Bond Lease, the Authority will lease the Existing Facilities and the 2024 Project to the Company. The Bond Lease shall contain terms and provisions substantially of the type normally included in bond leases between governmental “conduit” bond issuers and users of bond-financed property. The Bond Lease will be a triple net type lease. The Bond Lease shall permit (a) subleases and assignments to Affiliates (as defined below) and to parties with which the Company is merged or consolidated and to parties acquiring all or substantially all of the assets of the Company without the consent of the Authority, (b) assignments to lenders without the consent of the Authority, and (c) subleases and assignments to non-Affiliates with the consent of the Authority. Pursuant to the Bond Lease, the Company shall have the right to encumber the Existing Facilities and the 2024 Project, including, without limitation, with a leasehold deed to secure debt.

2.8. Purchase Option. Subject to the bond purchase agreement related to the Project Bonds, the Authority, in the Bond Lease or by separate instrument, shall grant the Company the option to purchase the Existing Facilities and the 2024 Project at any time during the lease term (the “**Purchase Option**”) to the extent that the Authority holds title thereto at the time, exercisable for (i) an option exercise price of \$10; (ii) plus any other amounts due to the Authority that must be paid at such time, including, without limitation, Community Recovery Payments (as defined below) then due and payable; and (iii) if all of the Bonds have not theretofore been retired, the Company shall cause all of the Bonds to be retired or cancelled. The Purchase Option shall be deemed to have been automatically exercised upon the expiration of the lease term or the earlier termination of the Bond Lease. Payment of the amounts so required is a condition to the closing under such purchase option. In the event the Company exercises the Purchase Option, the indemnification provisions in this Agreement shall survive the termination of this Agreement. This Purchase Option shall be evidenced by a recorded memorandum of lease or option agreement.

2.9. Definitive Documents. The term “**Definitive Documents**” means and includes the Project Bonds, the Bond Lease and related purchase option, this Agreement or the EDA, the above-mentioned bond purchase agreement, a trust indenture and any other related documents necessary to implement the transaction described herein. The Definitive Documents shall be prepared by Bond Counsel and shall be subject to the approval of the Authority, the Company and the purchaser of the Project Bonds, and the legal counsel thereof. The Parties agree to negotiate in good faith to establish the terms and conditions to be included in the Definitive Documents. It shall be a Closing Condition in favor of each of the Company and the Authority that they reach an agreement on such terms and conditions. The foregoing and any other provision hereof to the contrary notwithstanding, in no event shall this Agreement be construed to permit the Company to transfer, assign or share, in whole or in part, the property tax savings provided herein with any non-Affiliate, except to the extent set forth in the Bond Lease or as consented to in writing by the Authority.

2.10. Transfers of this Agreement by Company. All rights and benefits of the Company under this Agreement and under the Authority’s resolution authorizing this Agreement may be transferred and assigned by the Company, in whole or in part, to: (a) any Affiliate of the Company or (b) with the written approval of the Authority (but subject to the second to last sentence of this Section) to any person or entity which proposes to acquire, construct and install the 2024 Project

with the same effect as if such Affiliate or such persons or entity was named as the “Company” in this Agreement and in the Authority’s resolution authorizing this Agreement. Unless otherwise agreed in writing by the Authority, the assignment of the Company’s rights shall not release the Company from its obligations for costs and indemnification and following any such assignment, the Company and such assignee shall be jointly and severally liable for costs and indemnification hereunder. As used herein, “**Affiliate**” means any person or entity (as used herein “entity” includes, without limitation, any public body) that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, a specified person or entity. As used herein, the term “control” of a person or entity means the possession, directly or indirectly, of the power: (A) to vote 10% or more of the voting securities of such person or entity (on a fully diluted basis) having ordinary power to vote in the election of the governing body of such person or entity, or (B) to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

3. **AD VALOREM TAX ABATEMENT.**

3.1.1. Basis for Abatement. The Parties further understand and agree that the Company will be subject to *ad valorem* taxation on its leasehold interest in the Existing Facilities and the 2024 Project (the “**Leasehold Interest**”), pursuant to the decision of the Supreme Court of Georgia in *W.C. Harris, et al. vs. DeKalb County Board of Tax Assessors* (the “**Harris Case**”) as clarified in *Sherman vs. Fulton County Board of Assessors, et al.*, 288 Ga. 88, 701 S.E. 2d 472 (the “**Sherman Case**”). In order to provide the Company with sufficient information and certainty upon which it can base its decision to carry out the 2024 Project in the County, the Authority and Company agree that it is important to set forth the methodology by which the Leasehold Interest of the Company in the 2024 Project will be valued for *ad valorem* property purposes. Such methodology is set forth in Section 3.1.1(b) below. In the event that there is a change in applicable law regarding *ad valorem* taxation of leasehold interests under the precedent established in the *Harris Case* and/or the *Sherman Case*), the schedule set forth in Section 3.1.1(b) below may be revised to conform to such change in the law.

(a) Existing Facilities. With respect to the Leasehold Interest of the Company in the Existing Facilities, throughout the term of the Bond Lease the Company shall pay, in the form of ad valorem property taxes, an amount equal to 100% in each year of the amount that otherwise would have been paid by the Company if it owned the Existing Facilities for each such year.

(b) 2024 Project. (1) It is expected that the 2024 Project will be completed by December 31, 2025. The completion of the acquisition, construction and installation of the 2024 Project by the Company, as determined by the Fayette County Board of Assessors (the “**Board of Assessors**”) or as evidenced by the issuance of a certificate of occupancy, shall constitute the completion date (the “**Completion Date**”) for purposes of this Agreement. There will be no value to the Leasehold Interest of the Company in the 2024 Project prior to the Completion Date in accordance with the precedent established in the *Harris Case*. Thus, there will be no ad valorem property taxes on any assets acquired by the Authority in connection with the 2024 Project prior to January 1 of the year immediately

following the Completion Date (the “**Tax Commencement Date**”). Notwithstanding the foregoing, the Tax Commencement Date shall occur on or before January 1, 2026, and the first year of the tax incentive schedule (as describe in paragraph (b)(2) below) shall be on or before 2026.

(2) With respect to the Leasehold Interest on the Company in the 2024 Project, beginning on the Tax Commencement Date, the Company shall pay, in the form of ad valorem property taxes, an amount equal to the “**applicable percentage**” in each year of the amount that otherwise would have been paid by the Company if it owned the 2024 Project for each such year. The “**applicable percentage**” in each year during this ten (10)-year period will be as follows:

First Year	0%
Second Year	10%
Third Year	20%
Fourth Year	30%
Fifth Year	40%
Sixth Year	50%
Seventh Year	60%
Eighth Year	70%
Ninth Year	80%
Tenth Year	90%
Eleventh Year and following	100%

Following the tenth (10th) year after the Tax Commencement Date, title to the 2024 Project shall be transferred to the Company pursuant to the terms of the Bond Lease, and the 2024 Project will be taxable according to normal *ad valorem* property taxation rules that are applicable to privately-owned property. If the 2024 Project is not transferred to the Company for whatever reason following the tenth (10th) year after the Tax Commencement Date, the “applicable percentage” for the eleventh (11th) year and any subsequent year will be 100%.

(c) The determination of the fair market value of the Leasehold Interest in any asset in any year (prior to being reduced by the applicable percentage) will be subject to periodic reassessment, for which the Board of Assessors will employ its standard valuation methods. The Company shall have all rights of a taxpayer provided by Georgia law, including the right to contest valuation and reassessment, and nothing in this Agreement or the Definitive Documents shall constitute a waiver of any of such rights. The fair market value of the Leasehold Interest valued thereunder, after being reduced by the applicable percentage, shall be multiplied by 40% to determine the assessed value of each such category for such year and thereafter multiplied by the millage rate established by the County and any applicable municipality, to the extent the Existing Facilities and the 2024 Project are located within the geographical boundaries of such municipality, with respect to such year, to determine the *ad valorem* tax for such year.

(d) On an annual basis, the Company shall return the property comprising the 2024 Project for *ad valorem* taxation purposes in the County, and shall also deliver to the

Authority and the Board of Assessors on or before the anniversary date of this Agreement such additional documentation and information as may be reasonably necessary in order for the Board of Assessors to value the Existing Facilities and the 2024 Project and portions thereof.

3.1.2. Reversion to Normal Taxability. If the option to purchase the 2024 Project is exercised by the Company upon termination of the Bond Lease or earlier, in whole or in part, or if the Bond Lease is otherwise terminated or expires, the Existing Facilities and the 2024 Project will be taxable according to normal *ad valorem* property taxation rules that are applicable to privately-owned property.

3.1.3. Board of Assessors. The method of the assessment and taxability of the Project for *ad valorem* property tax purposes shall be the responsibility of the Board of Assessors (and not of the Authority).

3.2. No Other Incentives. The preceding provisions of this Section 3 of this Agreement are a complete and exhaustive list of all incentives that the Authority and all other local governments and local authorities, respectively, have agreed to provide. There are no other Authority or other local government or local authority incentives for the 2024 Project. It is hereby acknowledged that the Authority and the County will have no financial liability associated with the 2024 Project and will not be providing any financing or financial guarantees related to the 2024 Project.

4. JOBS AND INVESTMENT GOALS.

4.1. Inducement. The Company agrees to locate the 2024 Project in the County, provided, that nothing herein contained shall obligate the Company to make any particular level of investment or create any particular level of jobs. Rather, the Company's responsibilities regarding such matters shall be governed exclusively by the provisions hereof relating to Community Recovery Payments (provided for in Section 4.7 below). The Company's agreement to locate the 2024 Project in the County is based, in part, on the incentives being provided by the Authority in connection with the Bond Lease and this Agreement or the EDA. Such incentives are being provided to induce the Company to locate the 2024 Project in the County, with attendant job creation and investment on the part of the Company, all of which constitutes valuable, non-cash consideration to the Authority and the citizens of the County and of the State. The Parties acknowledge that the incentives provided for in this Agreement serve a public purpose through the job creation and investment generation represented by the 2024 Project. The Parties further acknowledge that the cost/benefit requirements applicable to the Authority in the course of providing such incentives dictate that some measure of recovery must be applied in the event that the anticipated jobs and investment do not for any reason fully materialize.

4.2. Community Jobs Goal. For purposes of this Agreement, the Company shall have a "**Community Jobs Goal**" of providing not fewer than 25 new full-time jobs physically located at the Project Site for the years 2028 through 2035 (collectively the "**Performance Period**"). Schedule 4.2 attached hereto and incorporated herein by reference provides rules that shall apply to satisfying the Community Jobs Goal. For purposes of this Agreement, the number of new

“full-time jobs” shall be defined and determined, from time to time, as provided on Schedule 4.2 attached hereto and incorporated herein by reference. Schedule 4.2 also determines how the number of full-time jobs shall be calculated.

4.3. Community Jobs Percentage. For every year in the Performance Period, the number of full-time jobs at the 2024 Project shall be determined (the “**Community Jobs**”). The number of jobs constituting the Community Jobs shall be divided by the applicable Community Jobs Goal and converted to a percentage to determine the “**Community Jobs Percentage**” for such year.

4.4. Community Investment Goal. For purposes of this Agreement, the Company shall have a “**Community Investment Goal**” of its having invested, in the aggregate, in the 2024 Project the amount of \$30,000,000 (the “**Community Investment Goal**”) for each year during the Performance Period. For purposes of the Community Investment Goal the investment at the 2024 Project shall be calculated on a cumulative basis from the date hereof to the end of each year of the Performance Period. Schedule 4.4 attached hereto and incorporated herein by reference provides rules that shall apply to satisfying the Community Investment Goal.

4.5. Community Investment Percentage. For every year in the Performance Period, the cumulative amount of capital investment by the Company in the 2024 Project shall be determined (the “**Community Investment**”). The amount of investment constituting the Community Investment shall be divided by the applicable Community Investment Goal and converted to a percentage to determine the “**Community Investment Percentage**” for such year. For purposes of this Agreement, capital investment includes all costs that would be capitalized under general accepting accounting principles (GAAP) or for federal income tax purposes.

4.6. Annual Report. On or before March 1 of each year following a year that is in the Performance Period, the Company shall provide to the Authority an annual report, which shall include a Community Jobs Report and a Community Investment Report, as described below. Each annual report shall be in substantially the form of Schedule 4.6 attached hereto and incorporated herein by reference, as revised for the matters being reported (each, an “**Annual Report**”).

4.6.1 Community Jobs Report. The Community Jobs Report shall contain a statement as to the full-time jobs at the 2024 Project for the immediately preceding year (each, an “**Annual Report Year**”) using the methodology provided above, and shall provide such supporting extracts from the Company’s employment records (consistent with the privacy rights of its employees) as the Authority shall reasonably request.

4.6.2 Community Investment Report. The Community Investment Report shall contain a statement as to the Company’s investment in the 2024 Project for the subject Annual Report Year, using the methodology prescribed herein.

4.6.3 Inspection Rights. No more often than once per year, the Authority and its agents shall be permitted to inspect employment and investment records of the Company, specifically related to the 2024 Project, to verify such information during normal business hours and upon at least three (3) business days’ prior written notice. The Company may reasonably redact such records to protect the confidentiality of the Company and its employees or its customers.

4.6.4 Project Percentages. The Annual Report shall calculate the Community Jobs Percentage and the Community Investment Percentage. The average of the Community Jobs Percentage and the Community Investment Percentage shall be the “**Project Percentage**,” which shall also be calculated and stated in the Annual Report. Notwithstanding the foregoing, the Community Jobs Percentage and the Community Investment Percentage may not exceed 100% for the purposes of calculating the Project Percentage. An illustration of the calculation of the Project Percentage is attached hereto on Schedule 4.6.4.

4.6.5 Project Shortfall Percentage. If the Project Percentage is 100% or more, the “**Project Shortfall Percentage**” shall be 0%. If the Project Percentage is less than 100%, then the Project Percentage shall be subtracted from 100% and the remainder shall be the Project Shortfall Percentage. An illustration of the calculation of the Project Shortfall Percentage is attached hereto on Schedule 4.6.5. The Project Shortfall Percentage shall be stated in the Annual Report.

4.7. Community Recovery Payments. For every year in the Performance Period, if a Project Shortfall Percentage greater than 20% is determined as provided in this Agreement, the Company shall make a payment to the Authority equal to the product of (a) the Project Shortfall Percentage multiplied by (b) the actual amount of ad valorem property taxes saved during the previous calendar year (each payment, a “**Community Recovery Payment**,” and collectively, the “**Community Recovery Payments**”). Any Community Recovery Payment shall be paid to the Authority simultaneously with the delivery of the Annual Report for such calendar year (i.e. on or before April 1 of the year following such calendar year).

4.8. Failure to File Report and Make Required Payments. If the Company fails to pay any Community Recovery Payment when due, interest shall be paid by the Company thereon at the rate of 1% per month (or such lesser rate as may be allowed by law) until paid. The Authority shall be entitled to enforce its rights under this Section 4.8, and the Company shall indemnify the Authority for all costs of enforcement, including any court costs and reasonable and actual attorneys’ fees and court costs. The Company shall be liable for the payment of any such interest, fees and costs.

5. TERMINATION OF AGREEMENT.

5.1. Delay. If, despite the good faith efforts of the Parties, the Closing has not occurred by December 31, 2024, then the Authority or the Company may terminate this Agreement by written notice to the other Parties, without any further liability except as otherwise expressly provided in this Agreement.

5.2. Approval by Governing Bodies. Upon its execution of this Agreement, each Party hereto represents and warrants that its governing body or other authorized committee or official thereof has approved and authorized its entry into such Agreement or Acknowledgment.

5.3. Closing Conditions. Any Party shall have the right to terminate this Agreement prior to the Closing, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice to the other Parties, if:

5.3.1. Any other Party is in material breach of this Agreement.

5.3.2. There has been commenced or threatened against the Authority, the Company or any Affiliate of the Company, any proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the matters that are the subjects of this Agreement, or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on, or otherwise interfering with, any of such matters. An uncontested validation proceeding for the Project Bonds, or a contested validation the full costs of which the Company agrees in writing to pay, shall not be considered a proceeding within the meaning of this Section.

5.4. The Authority's Termination Rights. The Authority shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the other Parties, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Authority shall have the right to terminate this Agreement, effective immediately upon giving written notice to the other Parties if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Authority has not been satisfied. If the Authority does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

5.5. The Company's Termination Rights. The Company shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the other Parties, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Company shall have the right to terminate this Agreement, effective immediately upon giving written notice to the other Parties if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Company has not been satisfied. If the Company does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

5.6. Effect of Termination. If any Party terminates this Agreement pursuant to a right provided herein or if this Agreement expires, this Agreement shall terminate or expire as to all Parties without any further liability on the part of any Party, except as may theretofore have accrued, or except as otherwise expressly provided in this Agreement, or shall exist as a result of any prior breach hereof. In the event of termination of this Agreement for any reason related to the condition of the Premises, any surveys, title commitments and title abstracts, test results, environmental reports, engineering reports, site plans, appraisals and related material, to the extent prepared by Company or on behalf of Company, and not previously delivered to Authority, shall be promptly provided to Authority at no charge. Authority understands that the foregoing will have been provided by others to Company and will not have been prepared by or verified by Company. All of such information is to be provided simply as an accommodation to Authority, and Company makes no representations as to their accuracy or completeness.

5. MISCELLANEOUS

4.1. Notices. Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, the Authority or the Company shall be sufficient for every purpose hereunder if in writing and either (i) delivered personally to the Party or, if such Party is not an individual, to an officer or other legal representative of the Party to whom the same is directed, or (ii) mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) sent via nationally recognized overnight courier for next business day delivery, as follows:

To the Authority: Fayette County Development Authority
200 Courthouse Square
Fayetteville, Georgia 30214
Attention: Chairman

With a copy to: Glover & Davis P.A.
10 Brown Street
Newnan, Georgia 30264
Attention: Nathan Lee, Esq.

With a copy to: Gray Pannell & Woodward LLP
336 Hill Street
Athens, Georgia 30601
Attention: James R. Woodward, Esq.

To the Company: Hoshizaki America, Inc.
618 Hwy 74 South
Peachtree City, Georgia 30269
Attention:

With a copy to: Warner, Hooper and Ramsey, P.C.
101 World Drive, Suite 325
Peachtree City, GA 30269
Attention: Matthew L. Ramsey, Esq.

4.2. No Partnership or Agency. No partnership or agency relationship between or among the Authority and Company shall be created as a result of this Agreement.

4.3. Governing Law; Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively construed and enforced in accordance with, the laws of the State of Georgia, except for the state's conflicts of law rules. The Company consents to the exclusive jurisdiction and venue over it in the Superior Court of Fayette County, Georgia for any disputed arising out of or in any way related to the Agreement and waives all jurisdictional defenses.

4.4. Amendments. Any amendments, deletions, additions, changes or corrections hereto must be in writing executed by the Parties hereto.

4.5. Counterparts. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

4.6. No Personal Liability of Representatives of Public Bodies. No official, member, director, officer, agent, or employee of the Authority, the City or the Board of Assessors or any other public body (including members, staff and agents) shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such public bodies. Without limitation, and without implication to the contrary, all Parties hereto waive and release any and all claims against each such official, member, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such public bodies into this Agreement.

4.7. No Personal Liability of Representatives of Company. No official, member, manager, director, officer, agent or employee of the Company shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as the agreements, undertakings, representations, and warranties, as appropriate, of the Company as an entity. Without limitation, and without implication to the contrary, all Parties hereto waive and release any and all claims against each such official, member, manager, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of the Company into this Agreement.

4.8. Effective Date. This Agreement is being executed and delivered, and shall be effective, as of June ___, 2024 (such date, the “**Effective Date**”).

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding and caused it to be delivered as of the Effective Date.

The "Authority":

FAYETTE COUNTY DEVELOPMENT
AUTHORITY

By: 
Chairman

ATTEST:


Secretary

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

The "Company":

HOSHIZAKI AMERICA, INC.

By: _____

Name:

Title:

ATTEST:

By: _____

Name:

Title:

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

SCHEDULE 1.1

PROJECT SITE

[Attach Legal Description]

SCHEDULE 1.2

SITE PLAN

SCHEDULE 4.2

RULES FOR SATISFYING THE COMMUNITY JOBS GOAL

1. For purposes of this Agreement, the number of new “full-time jobs” shall be defined and determined, from time to time, as provided follows:
 - (a) Only jobs created on or after May 1, 2024 shall be counted.
 - (b) Only employees of the Company located as the Project Site shall be counted.
 - (c) In determining the number of full time jobs, “full-time job” means the following:

“Full-time employee job” and “full-time job” means employment of an individual which:

 - (1) Involves a regular work week of 35 hours or more;
 - (2) Has no predetermined end date;
 - (3) Is covered by employer provided health insurance coverage (which, for leased employees, may be provided by the leasing company), unless such employer does not pay for all or any part of health insurance coverage for other employees; and
 - (d) The jobs used to calculate the Community Jobs Goal each year shall have a minimum annual salary of \$60,000, plus benefits.

For purposes of this Agreement, leased employees will be considered employees of the Company using their services and such persons may be counted in determining the number of full-time jobs if their employment otherwise meets the definition of full-time job contained herein. In addition, an individual’s employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. The employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year.

The Parties acknowledge the nature of the Company’s business and its desire to be able to count leased employees for purposes of this Agreement. At the same time, the Parties acknowledge the Authority’s interest in establishing permanent jobs in the community. To accommodate the interests of both Parties, the Parties agree as follows: The Company represents that its target for utilization of leased employees is that such workers not exceed on average in any year 10% of its workforce at the Project Site. The Parties agree, however, that if at any time the number of leased employees at the Project Site amounts to more than 15% of the Company’s workforce at the Project Site, then any leased

employees in excess of 15% of the Company's workforce at the Project Site shall not be counted as occupying full-time jobs for purposes of this Agreement.

2. The number of full-time jobs shall be calculated as provided below.

- (a) The number of jobs shall be determined based on the monthly average number of full-time employees and leased employees that are employed at the Project Site and are subject to Georgia income tax withholding for the taxable year.
- (b) The monthly average number of full-time employees in a taxable year shall be determined by the following method:
 - (i) for each month of the taxable year, count the total number of full-time employees (including, to the extent eligible to be counted, leased employees) of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;
 - (ii) add the monthly totals of full-time employees (and including, to the extent eligible to be counted, leased employees); and
 - (iii) divide the result by the number of full calendar months the business enterprise was in operation during the taxable year. Transferred jobs (within the meaning of the Georgia job tax credit program), except for jobs transferred to the Project Site from outside the State of Georgia, and replacement jobs (including, to the extent eligible to be counted, leased employees) may not be included in the monthly totals.

SCHEDULE 4.4

RULES FOR SATISFYING THE COMMUNITY INVESTMENT GOAL

1. Only capital investments in the Existing Facilities and the 2024 Project by the Company shall be counted, except as provided in 4 below.
2. Original cost, without regard to depreciation, shall be used in calculating whether the Community Investment Goal is met, except as provided in 3, below.
3. Transferred equipment relocated by the Company to the Existing Facilities and the 2024 Project to be used as part of the 2024 Project may be counted at net book value, or, if requested and substantiated by the Company to the Authority's satisfaction, and approved by the Authority, its fair market value.
4. Machinery and equipment leased to the Company under an operating lease (even though such property is not titled to the Authority and is not leased to the Company under the Bond Lease) and other machinery and equipment owned or beneficially owned by the Company but not leased to it under the Bond Lease, shall be counted.

SCHEDULE 4.6

FORM OF ANNUAL REPORT

Fayette County Development Authority
200 Courthouse Sq.
Fayetteville, Georgia 30214
Attn: Chairman

[DATE]

Re: Memorandum of Understanding (“MOU”) or Economic Development Agreement between the Fayette County Development Authority (“Authority”), and Hoshizaki America, Inc. (“Company”), regarding the capital project located in Fayette County, Georgia (the “Project”) – 20__ Annual Report

Dear _____

This letter shall serve as the 20__ Annual Report, as required under the MOU.

COMMUNITY JOBS REPORT

As of December 31, 20__, the total number of full-time jobs located at the 2024 Project was _____. We have enclosed _____, as evidence of such job creation.

The Community Jobs Goal for ____ was 25 jobs. The Community Jobs for the year ____ is ____ jobs. The Community Jobs Percentage is ____% ($\frac{\text{____}}{\text{____}}$).

COMMUNITY INVESTMENT REPORT

As of December 31, 20__, the Company has invested \$_____ in the 2024 Project.

The Community Investment Goal for 20__ was \$30,000,000. Therefore, the Community Investment Percentage is ____% ($\frac{\text{____}}{\text{____}}$).

PROJECT PERCENTAGE AND PROJECT SHORTFALL PERCENTAGE

The Project Percentage for 20__ is ____% ($(\frac{\text{____}}{\text{____}} + \frac{\text{____}}{\text{____}}) \div 2$). The Project Shortfall Percentage for 20__ is ____%.

COMMUNITY RECOVERY PAYMENTS

[IF A RECOVERY PAYMENT IS DUE, THAT PAYMENT SHOULD BE CALCULATED HERE BASED ON THE RECOVERY SCHEDULE IN THE MOU]

Please do not hesitate to let us know if you require any additional information.

Sincerely,

SCHEDULE 4.6.4

ILLUSTRATION OF CALCULATION OF PROJECT PERCENTAGE

The Project Percentage shall be determined by the following formula:

STEP 1

$$\begin{array}{r} \div \\ \hline = \end{array} \begin{array}{l} \text{Community Jobs} \\ \text{Community Jobs Goal} \\ \text{Community Jobs Percentage}^{(1)} \end{array}$$

$$\begin{array}{r} \div \\ \hline = \end{array} \begin{array}{l} \text{Community Investment} \\ \text{Community Investment Goal} \\ \text{Community Investment Percentage}^{(1)} \end{array}$$

STEP 2

$$\begin{array}{r} + \\ \hline = \end{array} \begin{array}{l} \text{Community Jobs Percentage}^{(1)} \\ \text{Community Investment Percentage}^{(1)} \\ \text{Total Percentage} \end{array}$$

STEP 3

$$\frac{\text{Total Percentage}}{2} = \text{Project Percentage}$$

⁽¹⁾ The Community Jobs Percentage and the Community Investment Percentage may not exceed 100% for the purposes of calculating the Project Percentage.

SCHEDULE 4.6.5

ILLUSTRATION OF CALCULATION OF PROJECT SHORTFALL PERCENTAGE

The Project Shortfall Percentage shall be determined by the following formula:

STEP 1

If the Project Percentage is 100% or more, the Project Shortfall Percentage is 0%

STEP 2

If the Project Percentage is less than 100%, $100\% - \text{Project Percentage} = \text{Project Shortfall Percentage}$.