

## **DEED OF RESTRICTIONS AND PROTECTIVE COVENANTS**

**THIS DEED OF RESTRICTIONS AND PROTECTIVE COVENANTS** (“Deed of Restrictions”), is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by **THE HARLAN COUNTY FISCAL COURT.**, (“Fiscal Court”) PO Box 956 Harlan, Harlan County, Kentucky, 40831, and **THE HARLAN COUNTY ECONOMIC DEVELOPMENT AUTHORITY** (“HCEDA”), PO Box 956 Harlan County, Harlan, Kentucky, 40831.

### **RECITALS:**

- A. The Fiscal Court and HCEDA (as defined herein below) are the owners of certain real property located in Harlan County, Kentucky (the “Property” as defined hereinbelow), which Property is also referred to as the “Harlan County Business Park” as defined hereinbelow.
- B. In order to ensure the protection of property values within the Harlan County Business Park, to ensure the orderly and harmonious development of the Property, and in order to establish a general plan for the improvement and development of the Property, the Fiscal Court and HCEDA desires to convey a Deed of Restrictions and Protective Covenants set forth herein.

### **ARTICLE I ESTABLISHMENT AND PURPOSES**

- 1.01 Establishment of Restrictions and Covenants. All of the Property and every Owner of such Property shall be subject to and bound by this Deed of Restrictions.
- 1.02 Purpose. The purpose of this Deed of Restrictions is to establish a general plan for the improvement, development, and maintenance of Harlan County Business Park and for maintaining the environmental integrity of the Property together with any future sites acquired or controlled by the HCEDA. The Property will be developed, improved, and used in such a manner as to attempt to attain in the sole discretion of the HCEDA, the following goals:
  - A. The maximum number of diversified employment opportunities will be created for residents of southeastern Kentucky.
  - B. The Economic well-being and stability of southeastern Kentucky will be enhanced.
  - C. Attractive and permanent Improvements appropriately located on the Property will provide a harmonious and appealing appearance and function.

- D. A uniform method of creating, maintaining, controlling, and preserving the Property as a high quality business park will be established.

1.03 Definitions.

- A. "Building" or "Structure" shall mean anything constructed, erected, or attached, the use of which requires location on the ground or in the ground as may be required for the use of any Site. The term shall not include poles and appurtenances thereto used for the provision of public utilities. The term "Building" shall include any accessory Building, sign, tower, vehicular parking area, loading dock, retaining wall, gas or liquid storage tank, fence and other man-made facility or infrastructure. The term "Building" shall include any "Structure" on any lot unless the context expressly provides otherwise.
- B. "Hazardous Material" shall mean [1] any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 USC §§6901 et seq.), as amended from time to time, and regulations promulgated thereunder; [2] any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §§9601 et seq.), as amended from time to time, and regulations promulgated thereunder; [3] asbestos; [4] polychlorinated biphenyls; [5] underground storage tanks, whether empty, filled or partially filled with any substance; and [6] any other substance which by any laws, ordinances, rules, and regulations the United States, the Commonwealth, State, county, city, or any other political subdivision in which the Property is located requires special handling or notification of a any federal, state, or local governmental entity in its collection, storage, treatment, or disposal.
- C. "Improvements" shall mean and include, but not be limited to, Buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, retaining walls, loading areas and facilities, signs, utilities, lawns, hedges, plantings, landscaping, water lines, storm water or sanitary sewers, waste treatment facilities, electrical and gas distributions facilities, storm water retention Structures or areas, and all other accessory Structures of any type or kind located on the Site.
- D. "Fiscal Court" shall mean, unless the context expressly provides otherwise, the Harlan County Fiscal Court, the local government comprised of Magistrates and Judge Executive.
- E. "Harlan County Business Park" shall mean the development located on the Property; this term may also be interchangeable with the term "Property".

- F. "Lot" or "Site" shall mean each portion of the Property that is subdivided and constitutes a discernable and separate tract of land. The terms may be used interchangeably.
- G. "Occupant" shall mean any Person who occupies, leases, rents, or is otherwise licensed or regularly entitled to occupy or use any portion of the Property or any Improvement on the Property. This term also includes any of the Person's successors in interest.
- H. "Owner" shall mean any Person who holds or acquires a fee interest in any portion of the Property. This term shall also include each "Occupant" as defined above unless the context expressly provides otherwise.
- I. "Person" shall mean an individual, partnership, corporation, trust, incorporated organization, limited liability company, limited liability partnership, association, joint venture, or a government agency or political subdivision thereof.
- J. "Property" shall mean that real property located in Harlan County, Kentucky, specifically described in Exhibit A that is attached to this Deed of Restrictions and is incorporated herein by this reference. The term "Property" shall also include all real property within the "Harlan County Business park" together with all the property acquired in the future and made a part of the Harlan County Business Park. This Deed of Restrictions shall be deemed to have been amended from time to time to include any such property acquired and made a part of the Harlan County Business Park.
- K. "HCEDA" shall mean the Harlan County Economic Development Authority, a non-profit, local industrial development authority created by the County of Harlan, pursuant to KRS 154.50.301 — 154.50.346

**ARTICLE II**  
**REGULATIONS OF USES AND OPERATIONS**

2.01 Permitted Uses and Operations. Use of the Property shall be limited to industrial, commercial, educational, and office and public uses and ancillary uses thereto including, but not limited to, manufacturing, distribution, corporate offices, educational classrooms, housing and laboratories and their related facilities.

2.02 Prohibited Uses.

A. Without the proper written consent of the HCEDA and any agency having jurisdiction over the laws, regulations, and ordinances set forth herein, no use shall be permitted that emits any of the following outside the Site on which it is located or that

adversely affects any immediately adjacent property to the Harlan County business Park.

[1] Noise or sound that is not in compliance with local noise ordinances, or other applicable laws or regulations, because of its volume, duration, intermittent beat, frequency, or shrillness;

[2] Hazardous Materials into the soil, water, or air of any Site, Lot, or the Property, in violation of applicable laws or regulations;

[3] Noxious odors in violation of public health, safety, welfare, environmental, or other applicable laws or regulations;

[4] Dust, dirt, fly ash, smoke, or fumes in violation of applicable ordinances, laws, or regulations;

[5] Unusual fire or explosive hazards;

[6] Radiation or radioactive emissions; or

[7] Interference with commercial communications, television, radio, telephone, or other similar commercial signals.

B. No part of the Property shall be used for residential purposes.

C. No part of the Property shall be used for a retail food service facility, including, but limited to, a restaurant, drive-in, or food carry out establishment without the consent of the HCEDA; provided, however that a food service facility, not open to the general public, for the use of the Occupants or employees working within a Building shall be permitted.

D. The approved use of the Property and Buildings erected shall not be changed significantly without the consent of the HCEDA.

E. No part of the Property shall be used for retail purposes unless approved by the HCEDA.

F. Business activities that employ any processes constituting a nuisance shall not be permitted. Operations or processes which violate federal, state, or local environmental ordinance, statute, or regulation will not be permitted.

G. The Property shall not be used for automotive sales, automotive repair facilities, parking or storage areas for construction equipment (other than when being utilized in the

construction of an on-Site facility) and parking or storage of trucks and trailers (except those being utilized by manufacturing and warehouse facilities located in the Harlan County Business Park).

H. No outside storage shall be permitted except as required in the normal course of business activity by manufacturing and warehouse facilities located within the Harlan County Business Park. Outside storage shall be screened from public view and from the view of adjoining Sites. All screening shall be approved by the HCEDA prior to its construction, alteration, or renovation.

I. No owner shall permit trucks, truck tractors, or semi-trailers equipped with its own engine to be parked on or about its Property for extended periods of time with their respective engine(s) idling. This provision shall not apply to the engines of semi-trailers where the engine is required to maintain the temperature of its cargo.

J. The following uses shall not be permitted and are prohibited on the Property even though they may otherwise be permitted uses under other Zoning Ordinances: mining; quarrying; sanitary landfill; construction and demolition debris landfill; waste composting energy recovery plant; hazardous waste collection site; solid waste transfer station; sewage treatment plant; slaughter house; concrete hatching and asphalt mixing; tannery; live animal or poultry sales; adult entertainment; confined poultry or animal feeding operation; or land farming (uses that receive solid or liquid wastes from others for disposal or spreading upon the Property).

2.03 Subdivision. No Site or Lot shall be further subdivided without prior written consent of the HCEDA.

2.04 Maintenance of Premises. Each Owner and Occupant of any Site or Lot shall at all times keep and maintain the Site and Buildings in a safe and clean condition and comply in all respects with all governmental ordinances, statutes, or regulations pertaining to safety, health, and fire protection.

2.05 Removal of Rubbish and Debris. All rubbish, debris, trash, excess dirt, industrial waste or garbage and any other unsightly material shall promptly be removed by the Owners and Occupants thereof.

### **ARTICLE III**

#### **REGULATION OF IMPROVEMENTS**

3.01 Setback Lines and Standards for Property Designated for Heavy Industrial Uses.

A. Front, Side and Rear Yards. All Buildings and Structures located on Property designated for Heavy Industrial uses shall be set back such distances from property lines and roadways, including internal streets, as established on the applicable subdivision plat, approved by the HCEDA for the Lot upon which the Building is to be constructed. Provided however, in no event shall any Building or Structure be placed or erected on a Site or Lot closer to a property line than hereinafter provided:

[1] Front Setback - No Building or Structure shall be located closer than seventy-five (75) feet from the front property line of any Site or Lot.

[2] Side Setback - No Building or Structure, shall be located closer than fifty (50) feet from the side property line of any Site or Lot.

[3] Rear Setback - No Building or Structure shall be located closer than one hundred fifty (150) feet from the rear property line of any Site or Lot

B. Permitted Setback Encroachments. The following Improvements are specifically excluded from these setback provisions:

[1] Roof overhang, subject to approval of the HCEDA of any overhang encroachment on the setback;

[2] Steps and pedestrian walkways;

[3] Curbs and storm water gutters;

[4] Landscaping, so long as it does not exceed three (3) feet in height above final grade within the setback areas;

[5] Ingress and egress traffic direction signs; and

[6] Rail spur(s) constructed on one (1) or more Sites.

C. Vehicular Parking Area Setback. Vehicular parking areas shall not extend beyond a front setback. For those Lots located on a corner Lot, vehicular parking shall not extend beyond the side yard setback for the side adjacent to a street.

3.02 Setback Lines and Standards for Property Designated for Light Industrial Uses.

A. Front, Side and Rear Yards. All Buildings and Structures located on Property designated for Light Industrial uses shall be set back such distances from property lines and roadways, including internal streets, as established on the applicable subdivision plat, approved by the HCEDA, for the Lot upon which the Building is to be constructed. Provided however, in no event shall any Building or Structure be placed or erected on a Site or Lot closer to a property line than hereinafter provided:

[1] Front Setback - No Building or Structure shall be located closer than fifty (50) feet from the front property line of any Site or Lot.

[2] Side Setback - No Building or Structure, shall be located closer than twenty-five (25) feet from the side property line of any Site or Lot.

[3] Rear Setback - No Building or Structure shall be located closer than twenty-five (25) feet from the rear property line of any Site or Lot.

B. Permitted Setback Encroachments. The following Improvements are specifically excluded from these setback provisions:

[1] Roof overhang, subject to approval of the HCEDA of any overhang encroachment on the setback;

[2] Steps and pedestrian walkways;

[3] Curbs and storm water gutters;

[4] Landscaping, so long as it does not exceed three (3) feet in height above final grade within the setback areas; and

[5] Ingress and egress traffic direction signs.

C. Vehicular Parking Area Setback. Vehicular parking areas shall not extend beyond a front setback. For those Lots located on a corner Lot, vehicular parking shall not extend beyond the side yard setback for the side adjacent to a street.

3.03 Variance from Setbacks. Variances to the setback requirements of this Deed of Restrictions may be granted by the HCEDA in its sole discretion, after consideration of the standards for variances under KRS 100.243

3.04 Building Plan Approval and Completion of Construction.

A. Prior Approval of Plans and Specifications. No Building shall be constructed, installed, erected, placed, modified, renovated or altered on any Site until the plans and specifications for such construction have been approved by the HCEDA. The plans and specifications shall include, among others things, architectural elevations, specifications for construction materials, a detailed landscape plan, and a plot plan showing the location, grade and elevation of the Building.

B. Completion of Construction. After commencement of construction of a Building, including any modification, renovation or alteration of a Building, the owner shall diligently prosecute the completion of the work on such Building.

C. Contiguous Property and Streets. The Owner and Occupant of a Lot on which a Building is being constructed, installed, erected, placed, modified, renovated or altered shall at all times keep public and private property and streets contiguous to the Site free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction. The Owner and Occupant shall pay the costs associated with carrying out this requirement.

3.05 Excavation. No clearing or excavation shall occur except in connection with the construction of a Building or its associated Improvements and with the construction of the rail spur(s), and upon completion thereof exposed openings shall be backfilled and disturbed ground shall be graded, leveled, and vegetative growth established.

3.06 Landscaping Maintenance.

A. The Owner and Occupant of any Site shall be responsible for, and pay the costs of maintaining, all areas of their Site, including those that are landscaped. The Owner and Occupant shall be responsible for, and pay the costs for maintaining, any dedicated right-of-way lying between such Owner or Occupant's property line and a paved street. All of such areas shall be maintained in a manner consistent with the neat and orderly appearance of the Harlan County Business Park.

B. Landscaping as approved by the HCEDA, including the establishment of grass or foliage in planted areas, shall be installed at the Owner and Occupants expense within ninety (90) days, or such other time period as is reasonably appropriate given growing seasons or weather conditions, after issuance of a certificate of occupancy by the appropriate governmental agency for the use and occupancy of any portion of a Building, including any renovation or alteration of such Building. However, upon



application the HCEDA may allow an extension of the ninety (90) day period to accommodate growing seasons or weather conditions.

### 3.07 Signs.

A. All exterior signs, including but not limited to, identification and traffic control signs, shall be subject to [1] compliance with any local sign ordinances, or other applicable laws or regulations, and [2] the reasonable approval of the HCEDA, and [3] the provisions of this Section.

B. Exterior signs shall only identify the firm occupying the Site and shall contain only the company's name logos or trademarks. All signs shall be professionally manufactured or rendered, constructed and erected in a durable and attractive manner, of a size, height and illumination suitable for the intended use, visually compatible with the surroundings, and properly maintained. Signs shall be single faced and confined to the walls of the Buildings. Provided however, only one (1) free standing sign, which may be two (2)-sided, shall be permitted on any Lot and it shall be limited to seven (7) feet in height as measured from the ground to the highest point of the sign. No free standing sign shall exceed 100 square feet in area.

C. Exterior signs may be illuminated under the following conditions: [1] signs may be either interior lit or exterior lit; [2] luminous background signs shall not exceed two hundred (200) foot lamberts.

D. No moving, flashing, or otherwise animated sign shall be permitted.

E. No billboards or outdoor advertising signs shall be permitted.

F. In addition to the signs permitted in this section, the Owner or Occupant may construct ingress and egress signs for each vehicular or pedestrian access point to the Property. These signs may contain only interior or spot lighting and shall not exceed four (4) feet in height as measured from the ground to the highest point of the sign.

### 3.08 Exterior Lighting.

A. All exterior Building lighting shall be designed, located and maintained to focus inward and downward on the Site on which it is located. No exterior lighting shall present a disabling glare hazard to drivers or pedestrians. Lighting fixtures used for facade,

feature or landscape lighting shall be directed so as to preclude light projection beyond the illuminated object.

B. Security lighting fixtures shall be shielded and aimed so that illumination is directed only to the designated area and shall preclude light projection beyond the illuminated area to be secured in excess of one (1) foot-candle, and in no event more than one (1) foot-candle beyond the property lines of the Site on which it is located. The light lens shall be shielded from being visible from adjacent roadways and properties.

C. Parking lot lighting fixtures shall be cut-off type fixtures (IESNA criteria) allowing no illumination above the plane of the fixture.

D. Electrical service to all exterior lighting fixtures shall be underground.

E. Prior to the construction, installation or alteration of any exterior lighting, plans and specifications for its construction, installation, or alteration shall be submitted to the HCEDA for approval subject to the standards set forth in this section.

### 3.09 Parking.

A. No parking shall be permitted upon any roadway, street or major road on any portion of the Property.

B. Parking shall be provided by the Owner and Occupant of each Lot. All parking shall be constructed on each Lot or combination of Lots to accommodate employees, customers and visitors to the business conducted on the Site.

C. Off-street parking shall be provided by the Owner and Occupant of each Site for trucks, trailers or other vehicles that may be serving such business, including loaded or empty trailers.

D. Such parking areas, including loading areas, together with driveways, aisles and other circulation areas, shall be paved with bituminous asphalt or concrete designed to carry the weight and traffic of their intended use.

E. Prior to the construction, alteration or renovation of any parking area, plans and specifications for its construction and installation shall be submitted to the HCEDA for approval subject to the standards set forth in this Section.

F. All new private and public property development, redevelopment or expansion shall provide permanent

landscaped areas equal to or not less than twenty percent of the paved parking area.

3.10 Loading Areas.

A. All loading and unloading areas located on a Site shall [1] be covered with bituminous asphalt or concrete designed to carry the weight and traffic of their intended use, and [2] be located at the rear of or on the side of the Building.

B. Prior to the construction, alteration or renovation of any loading or unloading area, plans and specifications for its construction and installation shall be submitted to the HCEDA for approval subject to the standards set forth in this section.

3.11 Screening of Storage Areas, Etc.

A. All above ground storage tanks, waste treatment or other processing equipment, cooling towers, vents, hoods, transformers, trash containers, loading docks, and other loading and unloading facilities and any other like equipment shall be screened in its entirety to a maximum of ten (10) feet by materials compatible with the major material on the exterior of the buildings located in the Site, or by landscape screening, or by decorative fencing so as to be hidden from any adjoining public street.

B. Any storage of junk or second-hand or salvage material outside any Building or visual buffer is prohibited.

C. Prior to the construction, alteration or renovation of any screening contemplated by this Section, plans and specifications for its construction and installation shall be submitted to the HCEDA for approval subject to the standards set forth in this Section.

3.12 Building Construction Requirements.

A. Any Building erected, altered or renovated in Harlan County Business Park shall conform to the construction standards enumerated in this Section.

B. All architectural designs and materials shall be consistent with the intended architectural image of Harlan County Business Park as determined by the HCEDA.

C. All Buildings shall be designed by a registered architect or engineer.

D. Prior to the construction, alteration or renovation of any Building, plans and specifications for its construction and installation shall be submitted to the HCEDA for approval subject to the standards set forth in this Section.

E. In addition to all other provisions of this Deed of Restrictions, all Buildings, including their alteration or renovation, shall meet the following requirements:

[1] Office or Administrative Area. The office or administrative portion of the Building shall have exterior walls of durable and attractive material such as, but not limited to, brick, stone, exposed aggregate, textured concrete, glass or designer blocks.

[2] Architectural Consistency. The manufacturing space shall have exteriors of high quality and durable material. That portion of all exterior manufacturing space walls extending from ground level to a height of six (6) feet, visible from the exterior front or sides of the Building, shall be constructed of high quality and durable material such as, but not limited to, brick, stone, exposed aggregate, textured concrete, glass or designer blocks.

[3] Building and Parking Area Coverage Limits. Total area covered by Building, including its accessory Buildings, and paved areas shall not exceed eighty (80%) percent of the total Lot area on which the Building is located unless otherwise approved by the HCEDA.

[4] Fire Resistant Materials. All Buildings must be constructed in accordance with applicable fire codes or other applicable laws or regulations.

[5] Temporary Structures. Temporary Structures may be placed on the Site for use as office space during construction of the permanent Building. Such temporary Structures and surroundings shall be kept in a neat, clean manner during construction of the permanent Building and shall be completely removed on completion of the permanent Building. The Owner and contractor shall provide approved temporary toilet facilities for workmen.

[6] Streets Drives, Curbs, and Walks. Prior to the construction, alteration or renovation of any of any driveway or access road into a public street or roadway,

plans and specifications for its construction and installations shall be submitted to the HCEDA for approval subject to the standards set forth in this section. All sidewalks shall be constructed of concrete, brick, or a similar construction material.

[7] Fences and Walls. No fences or walls shall be erected forward of the front elevation of any Building or beyond the side elevation of any Building facing a side street. Maximum height of fences and walls shall be six (6) feet. Variances to standards set forth in this Sub-Section (8) may be allowed at the sole discretion of the HCEDA.

[8] Pretreatment of Sanitary Sewage. Owners and Occupants may be required to perform pretreatment of sanitary sewage prior to its introduction into the public sanitary sewage system. All Owners and Occupants shall, at their own costs and expense, comply with the applicable requirements of Cumberland Sewer Works and Cumberland Water Works regarding their sanitary sewage discharge.

### 3.13 Building and Property Maintenance.

A. Owner and Occupant Responsibility. In addition to all other requirements of this Deed of Restrictions, the Owner and Occupant of Property and Buildings shall be responsible for and shall pay the costs of maintenance required under this section.

B. Maintenance of Buildings. Buildings or other Improvements shall not be permitted to fall into disrepair, and all Buildings shall at all times be kept in good condition and state of repair, adequately painted or otherwise finished.

C. Maintenance of Premises. Buildings and Property shall be maintained in a safe, clean condition and comply in all respects with all government, safety, health, fire and police requirements and regulations. All rubbish, trash, excess dirt, industrial waste, or garbage shall promptly be removed.

D. Maintenance of Storm Water Drainage Areas. All storm water drainage areas, including detention basins, located on the Owner or Occupant's Property, shall be sodded, seeded and maintained in a neat and orderly appearance consistent with Harlan County Business Park. These areas shall be maintained to eliminate erosion, wash-outs, or permanent accumulation of water.

E. Control of Surface Water Run-Off. The Owner of each Site shall be responsible and pay the costs for the retention, control, storage and disposal of storm water run-off from its Site in accordance with the approved storm water drainage plan for Harlan County Business Park and as from time to time amended. The Owner and Occupant of each Site shall be responsible for the construction of any facilities as required by the approved storm water drainage plan for Harlan County Business Park.

F. Prior Approval of Storm Water Drainage Systems. Prior to the construction, alteration or renovation of any storm water drainage system located on an Owner or Occupant's Site, plans and specifications for its construction and installation shall be submitted to the HCEDA for approval subject to the standards set forth in this Section.

### 3.14 Hazardous Materials.

A. Identification of Hazardous Materials. Owners and Occupants shall not permit any Hazardous Material to be transported, placed, held, or located upon the Property without providing the HCEDA with a list identifying all such Hazardous Materials at least ten (10) days prior to their being transported, placed, held, or located on the Property. Provided however, this prohibition shall not apply to Hazardous Materials necessary for the Owner to operate its business, provided that they are transported, used, kept, and stored only in quantities necessary for the usual and customary operations of the Owner's business and in a manner that complies with all federal, state, and local laws and all producers and manufacturers instructions and recommendations to the extent they are more strict than the laws and regulations.

B. Notice of Discharge of Hazardous Materials. If any Owner or Occupant receives notice of the occurrence of any event involving the escaping, spilling, releasing, discharging, or cleaning up of any Hazardous Material on their Site or any complaint, order, citation, or notice with regard to air emissions, water discharges, noise emissions, or any other environmental, health or safety affecting their Site, the Owner or Occupant shall give immediate notice thereof to the HCEDA disclosing full details.

C. Compliance with Environmental Laws. Each Owner and Occupant shall, at their own cost and expense, comply with all applicable statutes, ordinances, and regulations governing the presence, storage, use, disposal, and transportation of Hazardous Materials upon the Site. Each Owner and Occupant,

at their own cost and expense, shall promptly take any and all remedial action that the Owner or Occupant is required to perform under applicable statutes, ordinances, and regulations in response to any discharge of any Hazardous Materials on, under, or about the Site.

D. Indemnification of HCEDA. Upon the request of the HCEDA in its sole discretion, the Owner and Occupant shall enter into a contract to indemnify and hold harmless the HCEDA and each and every other Owner and Occupant within Harlan County Business Park from any and all losses, costs, claims, damages, and expenses, including but not limited to reasonable attorney fees, incurred as a result of or arising out of the Owner or Occupant's acquiring, transporting, using, placing, holding, or locating any Hazardous Material in, on, or about their Site or within Harlan County Business Park in violation of applicable laws or regulations or as a result of or arising out of any Hazardous Material discharge on or about the Owner or Occupant's Site in violation of applicable laws or regulations.

#### **ARTICLE IV**

##### **RIGHT TO REPURCHASE**

4.01 Right to Repurchase for Failure to Construct. If, after [A] the expiration of twelve (12) months from the date of a contract to sell a Lot, or [B] the expiration of twelve (12) months from the date of a lease of a Lot, the purchaser or lessee, shall not have started in good faith the construction of a Building, with approved plans and specifications, the HCEDA shall have the right, in its sole and absolute discretion, of refunding ninety percent (90%) of the purchase price or lease payments paid, if any, and reacquiring the Lot. Upon tender of the refund of the ninety percent (90%) of the purchase price or lease payments [A] the Owner shall, within sixty (60) days thereafter, execute a deed of conveyance conveying to the HCEDA fee simple title, free and unencumbered, and with covenants of general warranty of title, unless a lesser status of title was acquired, or [B] the Occupant shall execute an agreement rescinding its leasehold interest in the Lot.

4.02 Extension of Construction Period. The HCEDA may extend the twelve (12) month period in which the Owner or Lessee must begin construction. Any such extension must be in writing and shall specify the extended term.

#### **ARTICLE V**

##### **TERM**

This Deed of Restrictions shall continue in full force and effect for a term of thirty (30) years from its date of execution. This Deed of Restrictions shall automatically be extended for an additional thirty (30) year term unless terminated by the Owners of at least seventy-five percent (75%) of the Property subject to this Deed of Restrictions, exclusive of common areas and land dedicated to public use.

## **ARTICLE VI**

### **GENERAL PROVISIONS**

6.01 Notice of Revisions. Upon making any revision of this Deed of Restrictions, HCEDA shall promptly provide written notification of same and send a copy of the revised Deed of Restrictions, to the Fiscal Court.

6.02 Binding Effect; Deed of Restrictions Run with Land. This Deed of Restrictions shall be binding upon the HCEDA its successors and assigns. This Deed of Restrictions shall run with the land and shall be binding upon all parties claiming any interest of any kind in and to the Property.

6.03 Inspection. The HCEDA may from time to time, inspect the Property and Improvements subject to this Deed of Restrictions to ascertain compliance herewith. The HCEDA shall make a written request to the applicable Owner or Occupant to do same. The Owner or Occupant must respond within seven (7) working days stating an agreeable date and time which date shall be within fourteen (14) days of receipt of the HCEDA's request.

6.04 Failure to Enforce Not a Waiver of Right. [A] Failure of the HCEDA to enforce any provision of this Deed of Restrictions shall in no event be deemed a waiver of the right to do so thereafter; and [B] failure of the HCEDA to enforce any provision of this Deed of Restrictions shall in no event be deemed a waiver of any right to enforce any other provision of this Deed of Restrictions.

6.05 Payment of Legal Expenses. In the event that the HCEDA may initiate legal proceedings to enforce any provisions of this Deed of Restrictions against any of the Owners or Occupants, and if the HCEDA is successful in enforcing such provision, the Owner or Occupant against whom the legal proceedings were initiated shall be responsible for and shall reimburse the HCEDA for its attorney fees, court costs, and other litigation expenses actually incurred in such proceeding.

6.06 Termination and Modification. This Deed of Restrictions may be terminated, altered or amended by the HCEDA and with the consent of the Owners of at least seventy-five (75%) percent of the Property subject to these restrictions, exclusive of common areas and land dedicated to public use.



6.07 Assignment of HCEDA's Rights and Duties. Any and all rights, powers or obligations of the HCEDA under this Deed of Restrictions may be assigned by the HCEDA to an assignee approved by the Owners of at least two-thirds (2/3) of the Property exclusive of common areas and land dedicated to public use.

6.08 HCEDA Consents or Approvals. Any and all consents or approvals required of the HCEDA under the provisions of this Deed of Restrictions shall be in its sole and reasonable discretion unless otherwise provided. To be effective any such consents or approvals shall be in a writing signed by a duly authorized officer of the HCEDA.

6.09 HCEDA Completion of Owner or Occupant Obligations and Lien. Any obligation of an Owner or Occupant under the provisions of this Deed of Restrictions, including but not limited to those to maintain and repair Buildings, construct and maintain storm water drainage systems and to maintain the Property, that is not undertaken or completed by the Owner or Occupant may be undertaken or completed by the HCEDA after ten (10) days prior written notice to the Owner or Occupant, and if such Owner or Occupant, within a reasonable time thereafter, fails to undertake or complete performance of such obligation, or fails to commence the undertaking or performance of such obligation with a continued good faith effort to diligently complete same. If the HCEDA elects to undertake such obligation then the Owner or Occupant shall reimburse the HCEDA for any expenses it incurs in undertaking, or the completion of, such obligation, including but not limited to engineering, architectural, construction, or legal expenses. Such amounts expended by the HCEDA shall be immediately reimbursed by the Owner or Occupant following presentation of an invoice to the Owner or Occupant for such services. If the HCEDA is not immediately reimbursed then such amount owing shall bear interest at 12 percent per annum. Any such amount owing shall constitute a lien on the Property and be enforceable in all respects by the HCEDA.

6.10 Documents Incorporated by Reference. Any document referred to in this Deed of Restrictions as a supplement or exhibit shall be incorporated by reference herein as if copied in full.

6.11 Construing Terms of Deed of Restrictions. In construing this Deed of Restrictions plural terms shall be substituted for singular, and singular for plural, in any place in which the context is so required.

6.12 Effect of Invalidation. If any provision of this Deed of Restrictions is held to be invalid or unenforceable, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

6.13 Law for Construction of Terms and Venue for Enforcement. The provisions of this Deed of Restrictions shall be construed by and in accordance with the laws of the Commonwealth of Kentucky. Venue for any legal action for the enforcement or construction of this Deed of Restrictions shall exclusively be the Harlan Circuit Court, Harlan, Kentucky.

6.14 Headings. Headings inserted in this Deed of Restrictions are for convenience only and shall not in any way be construed as defining, limiting, extending, or otherwise modifying the particular provisions to which they refer.

**IN WITNESS WHEREOF,** the Chairman of the Harlan County Economic Development Authority, duly granted by their Board of Directors, and Judge Executive of the Harlan County Fiscal Court have executed this Deed of Restrictions to effect on the day and year first above written.

**HARLAN COUNTY ECONOMIC DEVELOPMENT AUTHORITY**

**BY** \_\_\_\_\_

**PETE CORNETT, Chairman**

**HARLAN COUNTY FISCAL COURT**

**BY** \_\_\_\_\_

**DAN MOSLEY, Judge Executive**

## Exhibit A

### Legal Description of Harlan County Business Park

All of the Property located in Harlan County, Kentucky referred to as the "Harlan County Business Park," together with all property acquired in the future and made part of the Harlan County Business park, including but not limited to, that Property set forth on Plat Book 357, page 744. Such Property is currently owned by the Harlan County Fiscal Court and described accurately below:

BEGINNING on a steel pin with brass cap set on the south line of the CSX railroad right-of-way and being a common corner with the existing Sleepy Hollow Country Club property; thence, with said Sleepy Hollow Country Club boundary S27°50'00" W 239.88 feet to a point in said property line, thence, S71°47'00" E 82.72 feet to a point in said property line; thence, S 6°38'00" W 391.95 feet to a steel pin with brass cap set in said property line; thence continuing with said line S83°22'00" E 83.50 feet to a steel pin with brass cap set, a common corner with the property of the Commonwealth of Kentucky, (Cumberland Elementary School); thence, leaving Sleepy Hollow Country Club property and with said Commonwealth of Kentucky boundary S28°38'00" W 139.05 feet to a 2" rebar on the west side of McKnight Branch; thence, S10°32'41" W 230.22 feet to a 24" sycamore on the east bank of McKnight Branch; thence, leaving said property with the boundary of Simpson and Sons Service, Inc. S37°19'31" E 296.33 feet to an original concrete monument at a common corner with Simpson and Sons Service, Inc. and the property of Charles Boggs; thence leaving said Simpson and Sons Service, Inc. and with the boundary of said Charles Boggs property S 9°26'55" W 290.54 to a 2" rebar in McKnight Branch; thence S 66°45'00" E 278.88 feet to an original concrete monument on the crest of a ridge 18" west of a 36" oak; thence, up the ridge S 11°11'26" E 113.65 feet to an original concrete monument (set 2" rebar in monument); thence, leaving said Charles Boggs line and exterior boundary line of Ark Land Company S 15°08'15" W 601.62 feet to a 2" rebar on the north side of a road on a strip bench; thence, approximately with said road N 61°21'57" W 256.91 feet to a 2" rebar; thence S 86°33'02" W 643.58 feet to a 2" rebar; thence S 82°38'25" W 776.54 feet to a 2" rebar; thence, N 89°04'13" W 461.71 feet to a 2" rebar; thence, leaving bench N 52°57'50" W 698.01 feet to a steel pin with brass cap set in exterior property line of Ark Land Company and a common property line with James Jackson Jr.; thence, with said boundary line and the former location of Spout Branch N 19°42'00" E 316.09 feet to a 2" rebar near a fence; thence N 16°15'00" W 244.77

feet to a 2" rebar (former location of Benham Coal Co. Mon #41); thence, N 3°41'00" E 435.84 feet to a 2" rebar (former location of Benham Coal Co. Mon #42); thence, N 15°36'00" W 245.94 feet to a point (former location of Benham Coal Co. Mon #43) and adjoining the property of Joseph Creech; thence, with said Creech boundary N 57°54'00" W 184.49 feet to a steel pin with brass cap set in this south property line of the relocation U.S. 119; thence with said south property line N 72°03'17" E 275.31 feet to a point with said line 175 feet right or south of Station 1100+00 of the centerline of U.S. 119; thence, N 76°02'05" E 182.99 feet to a point 140 feet right or south of Station 1101+75.00 of the centerline of U.S. 119; thence, N 68°56'42" E 131.24 feet to a point 170 feet right or south of Station 1105+50.00 of the centerline of U.S. 119; thence, N 88°19'35" E 350.14 feet to a point 180 feet right of south of Station 1109+00.00 of the centerline of U.S. 119; thence, S 89°01'16" E 401.12 feet to a point 210 feet right of south of Station 1113+00.00 of the centerline of U.S. 119; thence N 86°41'23" E 100.00 feet to a 2" rebar set 210 feet right or south of Station 1114+00.00 of the centerline of U.S. 119; thence, N 53°09'09" E 181.97 feet to a steel pin with brass cap set 150 feet right or south of Station 1118+50.00 of the centerline of U.S. 119; thence, N 65°24'53" E 424.64 feet to a 2" rebar set 90 feet right or south of Station 1122+50.00 of the centerline of U.S. 119; thence, N 64°37'55" E 315.36 feet to a steel pin with brass cap set approximately 90 feet right or south of U.S. 119 centerline at the intersection of U.S. 119 south property line and the south right of way of the CSX railroad; thence, with the CSX right of way; thence, S 81°13'42" E 67.55 feet to a point in said right-of-way; thence, along a 50 feet offset (right) or a seven degree clockwise curve with a radius of 818.51 feet; when reduced to a straight line S 67°23'06" E 306.55 feet to the BEGINNING containing 134.59 acres, more or less.