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# AMENDED AND RESTATED PROTECTIVE COVENANTS OF MMRC REGIONAL INDUSTRIAL PARK HIGHWAY 801

THIS DECLARATION of Amended and Restated Protective Covenants of MMRC Regional Industrial Park Highway 801, made this 25th day of August, 1999, by the MMRC Regional Industrial Development Authority, Inc. (sometimes hereinafter referred to as the Industrial Development Authority or the Declarant), a non-profit corporation formed under the provisions of Kentucky Revised Statutes, and Chapter 154.50, Sections 301 through 346.

## ARTICLE I
## RECITALS

1.01 WHEREAS, the Industrial Development Authority is the owner of the following described property in the County of Rowan, Commonwealth of Kentucky, (hereinafter referred to as the "Property"):

A parcel of land containing 509.44 acres and located on the East side of State Route 801, approximately 1.0 mile North of Interstate 64, Exit 133, on the waters of Bull Fork of the North Fork of Triplett Creek in Rowan County, Kentucky. Said parcel of land is depicted on a plat of survey dated 4/16/98 by Curd Surveying, Engineering & Land Consulting, Inc., and recorded in Plat Cabinet 1, Slide 572, of the Rowan County Clerk's records.

BEING THE SAME REAL PROPERTY acquired by Deed from Maple Leaf Holdings, Inc., to MMRC Regional Industrial Development Authority, Inc., dated June 25, 1998, recorded June 25, 1998, in Deed Book 186, Page 354.

1.02 WHEREAS, in order to establish a general plan for the orderly, consistent and compatible improvement, development and use of the Property, the Industrial Development Authority desires to subject the Property to certain conditions, covenants and restrictions, applicable to the use and development of the Property.

## ARTICLE II
## GENERAL PROVISIONS

2.01 **Establishment of Covenants.** The Industrial Development Authority heretofore filed in the office of the Rowan County Court Clerk Protective Covenants relating to the MMRC Regional Industrial Park, Highway 801, said Protective Covenants being of record in Miscellaneous Records Book 9, Page 96-106. No property has heretofore been sold in the Industrial Park and the MMRC Regional Industrial Development Authority, Inc., being the sole owner of all of the above-referenced property, does hereby amend and restate the Protective Covenants for said Industrial Park and the Industrial Development Authority hereby declares that the Property shall hereafter be held, transferred, sold, leased, improved, developed, and occupied subject to the covenants, and restrictions herein set forth, each and all of which are to the benefit of the Property and shall apply to each and every parcel of the Property now owned and hereafter sold and/or conveyed by the Industrial Development Authority, and these Amended and Restated Protective Covenants shall bind the heirs, assignees, successors and future owners of all or any portion of the Property. Upon the filing of these Amended and Restated Protective Covenants in the Rowan County Court Clerk's Office the aforementioned Protective Covenants (Miscellaneous Book 9, Page 96-106) shall be null and void, and superceded in their entirety by these Amended and Restated Protective Covenants.

2.02 **Purpose of Covenants.** The purpose of these covenants is to insure the improvement, development and use of the property for industrial purposes only, and to provide adequately for the quality of the improvement and development of the Property in accordance with a general and uniform plan.

The general purpose of these Protective Covenants is to insure that the MMRC Regional Industrial Park will be developed, improved and used in a manner that will achieve the following goals:

A. To develop the Property for industrial purposes so that employment opportunities will be created for residents of the region.

B. To develop the Property for industrial purposes without environmental degradation; damage or harm to the air, water, or soil; and without creating undesirable burdens on public and private utilities, facilities and services.

C. To develop the Property with attractive and permanent industrial improvements appropriately located within the Property so as to provide a harmonious and appealing appearance and function.

D. To insure future owners and occupants of land within the Industrial Park that the Property within the Industrial Park will not be used in such a manner as to create a hindrance or nuisance to their use of the land, or to unreasonably depreciate or detract from the value and use of their land.

The specific purpose of these Protective Covenants is to provide a means for creating, maintaining, controlling and preserving the Property as a high-quality Industrial Park. To this end, it is Declarant's intention that any grantee shall be bound to carry out and enforce the intent and spirit, as well as the letter, of this Declaration.

2.03 **Definitions.**

A. **Site** - "Site" shall mean all contiguous land under one ownership for industrial development.

B. **Improvements** - "Improvements" shall mean and include, but not limited to, buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, retaining walls, loading areas and facilities, signs, utilities, lawns, hedges, mass plantings, landscaping, water lines, sewers, electrical and gas distribution facilities, and all structures of any type of kind.

C. **Declarant** - "Declarant" shall mean the Menifee, Morgan, Rowan and Carter Industrial Development Authority, and its successors and assigns.

D. **Industrial Park or Property** - "Industrial Park" or "Property" shall mean the property described in Exhibit A attached hereto, and any additional property which may hereafter be acquired by the Industrial Development Authority and which the Industrial Development Authority may subject to these Protective Covenants.

## ARTICLE III
## PERMITTED AND PROHIBITED USES

3.01 **Permitted Uses.** The Property shall be used for the following permitted purposes:

Light to medium manufacturing, development and assembly plants; warehousing and distribution facilities; wholesale establishments and distribution facilities; service industries; research and development facilities; printing, engraving, publishing and related activities; food and beverage processing and distribution; and other similar activities and related facilities (such as equipment and vehicle repair and maintenance facilities) all of which must be conducted with a minimum of noise, vibration, dust, dirt, smoke, odor, and other objectionable characteristics.

3.02 **Specific Prohibited Uses.**

A. Residential use;

B. Commercial Incineration;

C. Junk Yards;

D. Rubbish, Garbage or Trash Dumps;

E. Restaurants, except private (i.e., not open to the public) restaurants, cafeterias, snack bars, etc., which are associated with a plant, factory, warehouse, distribution facility or other permitted facility within the Industrial Park;

F. Motels;

G. Gas Stations;

H. Membership Clubs;

I. Manufacturing of Ceramic Products;

J. Manufacturing of Chemicals;

K. Manufacturing or Processing of Animal Products;

L. Community Facilities, except (i) training centers, (ii) private (i.e., not open to the public) day care facilities which are associated with plant, factory, warehouse, distribution facility or other permitted facility within the Industrial Park, and (iii) fire stations, police substations or other similar municipal uses;

M. Storage, Handling, Treatment or Disposition of Hazardous, Toxic or Radioactive Wastes;

N. Retail use (except as associated with a permitted use as the principal business activity on the premises);

O. Agricultural use involving the keeping or maintaining of livestock on the premises; and

P. All other uses not consistent with a light-medium industrial classification.

**3.03 General Prohibited Uses.**

A. No operation or use shall be permitted or maintained which causes or produces any of the following which adversely effects any adjacent property:

1. Noise or sound that is objectionable because of its volume, duration, beat, frequency or shrillness;

2. Smoke;

3. Noxious, toxic, or corrosive fumes or gases;

4. Obnoxious odors;

5. Dust, dirt or fly ash;

6. Unusual fire or explosive hazards (not including ordinary household items); and

7. Vibration in violation of applicable ordinances.

B. No part of the Property shall be used in any manner which violates any federal, state or local environmental laws, ordinances or regulations pertaining to soil, water or air contamination.

## ARTICLE IV
## REGULATION OF IMPROVEMENTS

**4.01 Minimum Setback Lines and Standards.**

A. **General** - No part of any structure of any kind shall be placed or erected on a Site or Lot closer to a property line or right of way line than hereinafter provided.

B. **Front Setback** – No building, or any other structure, shall be located less than 100 feet from the front property line of any Site or Lot.

C. **Side Setback** - No building, or any other structure, shall be located less than 50 feet from the side property line of any Site or Lot.

D. **Rear Setback** - No building, or any other structure shall be located less than 75 feet from the rear property line of any Site or Lot.

E. **Fences and Walls** - No fences or walls shall be erected forward of the front elevation of any building. Maximum height of fences and walls shall be eight feet unless a greater height is approved in advance by the Industrial Development Authority.

The following improvements are specifically excluded from these setback provisions:

1) Roof overhang subject to the specific approval of Declarant in writing;

2) Steps and walks;

3) Access road paving and associated curbing, except that vehicle parking areas shall not extend beyond a front, side, or rear setback line;

4) Landscaping;

5) Planters, not to exceed three (3) feet in height;

6) Signs, identifying and directional.

4.02 **Completion of Construction.** After commencement of construction of any improvements the owners shall diligently prosecute the work thereon so that the improvements shall not remain in a partly finished condition any longer than reasonably necessary. The owner of any Site or Lot on which improvements are being constructed shall at all times keep public and private property and streets contiguous to said Site or Lot free from any dirt, mud, garbage, trash or other debris which might be occasioned by construction of the improvements. The owner shall provide measures such as silt fences, straw bales, etc. to control erosion materials from leaving the Site during construction.

4.03 **Excavation.** No clearing or excavation shall be made except in connection with construction of an improvement, and upon completion thereof exposed openings shall be back-filled and disturbed ground shall be graded, leveled and seeded.

4.04 **Landscaping.**

A. Every Site on which a building is placed shall be landscaped according to plans approved by the Industrial Authority, and maintained thereafter in a sightly and well-kept condition.

B. All landscaping shall be approved by the Declarant and installed within ninety (90) days of completion of the building, weather permitting.

C. The owner, lessee or occupant of any Site or Lot, whether occupied or unoccupied, shall at all times keep the grass neatly mowed and the landscaping well maintained. Should the owner, lessee or occupant of any Site or Lot fail to remedy any deficiency in the maintenance of the grass and/or landscaping within ten (10) days after proper notification, the Industrial Development Authority hereby expressly reserves the right, privilege and license to mow the grass and maintain the landscaping at the expense of the Site owner, lessee, or occupant, as the case may be.

D. It is the desire of the Industrial Development Authority to preserve to the extent possible all trees currently on

the property. Any property owner, lessee or occupant of any site shall seek prior written permission from the Declarant before any trees are removed from their site. This provision is not intended to impede the construction of improvements on the property and the Declarant shall not unreasonably deny such requests for the removal of such trees. It is the intent of this section to encourage cooperation in the preservation of the natural landscape of the property, and meet the needs and requirements of the owners, lessees and occupants of the property.

**4.05 Signs.**

A. Plans and specifications for the construction, installation or alteration of all outdoor signs, including traffic or directional signs, shall be first submitted to and have the written approval of the Industrial Development Authority.

B. Exterior signs and company signs and logos on buildings shall be first submitted to and have the written approval of the Industrial Development Authority.

C. Signs to be approved shall include all permanent and temporary signs.

D. 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; and visually compatible with surroundings.

E. Signs shall at all times be well maintained.

**4.06 Parking.**

A. No employees or customer parking shall be permitted upon any roadway or street on any portion of the property.

B. Paved parking areas in front of a building shall be used only for visitor parking and for limited employee parking. Any use of the paved parking area in front of a building for limited employee parking shall be approved in advance by the Industrial Development Authority. Sufficient handicap parking shall be provided in accordance with federal, state and local laws.

C. Off-street parking shall be provided by the owner of each Site or Lot and shall be adequate to accommodate employees, customers and visitors to the business conducted on the Site. Offstreet parking shall be provided by the owner or occupant of each Site for all trucks, trailers and any other vehicles that may be servicing the business, or located on the lot. Such parking areas shall be paved with asphalt, concrete, or such other year-round surface material as may be approved in writing by the Industrial Development Authority. Such off-street parking areas shall not extend beyond a front, side or rear setback line.

**4.07 Storage and Loading Areas.**

A. Unless specifically approved by the Industrial Development Authority in writing, no goods, products, materials, supplies or equipment, including but not limited to, trash and garbage receptacles, shall be stored in any area on a Site except inside a closed building, or behind a building or other visual barrier screening such areas from the view of adjoining properties and/or streets.

B. Any temporary storage of junk, second hand or salvage material outside any building shall be screened from view of adjoining properties and/or street by a visual barrier.

C. Loading and unloading areas shall be located at the rear or to the side of the building, and shall not extend beyond the rear or side set-back limits.

**4.08 Building Regulations.** Any building erected on a Site shall conform to the following construction practices:

A. The design for any building constructed on any lot in the Property shall be approved by an Architect or Engineer registered in Kentucky, and shall have exterior walls of durable, attractive materials such as brick, stone, exposed aggregate, textured concrete, glass, vinyl, metal or such other material as may be approved

in writing by Declarant or such agent or successor as it may designate. It is the Declarant's intent to approve building designs which are functional, durable, attractive, of high quality finish materials, and compatible with the overall image of quality and permanence of the Park.

B. Building and Parking Area Coverage Limits. Total area covered by building structure shall not exceed forty (40) percent of the total Site area. Parking area shall not exceed 40 cars per acre. (A parking space shall be computed to be 250 square feet.) Total area covered by building and paving shall not exceed sixty (60%) percent of the total Site area.

4.09 **Temporary Structures.** Temporary structures may be placed on the Site for use as office space, storage, and tool sheds, etc., during construction. The construction site shall be kept in a neat, clean manner during construction of the permanent building and all temporary structures shall be completely removed upon completion of the permanent building. The owner or Contractor shall provide approved temporary toilet facilities for all workmen.

After the completion of construction, temporary structures, trailer, semi-trailers, or other temporary storage facilities shall be prohibited.

4.10 **Utility Service.** The Industrial Development Authority requires that all utility lines on each Industrial Site be located underground. This provision shall not forbid the erection and use of above-ground temporary power or telephone services incident to the construction of improvements on the Site, or the installation of above-ground structures, meters and facilities relating to the said utilities.

4.11 **Easements.** Any purchaser of a portion of the Property agrees to execute all easements reasonably necessary and required by the Declarant or any utility company providing services to the Industrial Park for the further development of the Park; provided, however, that any such easements be within the front, back or side set-back areas. Reference to easements includes those for infrastructure. Such easements shall be permanent, shall provide for adequate ingress and egress, shall provide reasonably necessary rights to cut down or trim trees, and shall contain such limitations on construction of improvements on the easement as may be reasonably necessary.

4.12 **Screening of Storage and Refuse Areas.** Garbage and refuse containers shall be contained within buildings, or if outside shall be concealed by the building or a screening wall of material similar to and compatible with that of the building. These elements shall be integral with the concept of the building plan, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible. Unless specifically approved by the Declarant in writing, no materials, supplies, equipment, goods, or finished products shall be stored on the Property except inside a closed building, or behind a visual barrier screening such areas so that they are not visible from neighboring property or streets.

4.13 **Streets, Drives, Curbs and Walks.** Streets, drives, curbs and walks shall be constructed in accordance with plans and specifications submitted to and approved in writing by the Declarant. The location of any driveway or access road onto a public street or roadway shall be approved in writing by the Declarant. All drives or access roads shall be paved with asphalt or concrete. All sidewalks shall be constructed of concrete, brick, or similar construction.

4.14 **Storage Tanks.** No storage tanks in excess of 500 gallons, including but not limited to those used for storage of gasoline, diesel fuel, oil, water or propane gas, shall be permitted on the Property unless approved by the Declarant in writing. Any above the ground storage tanks shall be fenced and locked for safety purposes, and shall be screened from view from all streets and adjoining properties. This section shall not apply to the above-ground installation of fire suppression tanks or equipment of adequate size to provide fire protection for the improvements on the site and the activities being conducted thereon.

4.15 **Air Conditioning or other Equipment.** No air conditioning or other equipment, except rooftop equipment, which is visible on the exterior of any building or other improvement shall be permitted unless screened from view of all streets and adjoining properties.

4.16 **Exterior Materials and Colors.** Finish building materials shall be applied to all sides of a building which are visible to the general public, as well as from neighboring property and streets. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent buildings. The Declarant shall have the sole right to approve or disapprove materials and colors on the exterior of all buildings and improvements.

4.17 **Maintenance of Buildings.** No building or other improvement shall be permitted to fall into disrepair, and the exterior of each building and improvement shall at all times be kept in good condition and state of repair, adequately painted or otherwise finished. The Declarant shall notify a property owner in writing of any violation of this section, describing the corrective action which should be taken and the estimated costs thereof, and if the property owner does not initiate the corrective action within 30 days of the receipt of notice and timely proceed with its conclusion, the Declarant reserves the right to make or cause to have made the necessary repairs or maintenance and the property owner agrees to reimburse Declarant for any expenses actually incurred in correcting the violation.

4.18 **Maintenance of Site or Lot.** Each owner or occupant of any Site or Lot must at all times keep and maintain the premises and grounds in a safe, clean and wholesome condition, and comply in all respects with governmental, safety, health, and police requirements. Weeds, debris, rubbish, trash, excess dirt, industrial waste, garbage and any other unsightly material shall not be allowed to accumulate on the Property. The Declarant shall notify a property owner in writing of any violation of this section, describing the corrective action which should be taken and the estimated costs thereof, and if the property owner does not initiate the corrective action within 30 days of the receipt of notice and timely proceed with its conclusion, the Declarant reserves the right to make or cause to have made the necessary repairs or maintenance and the property owner agrees to reimburse Declarant for any expenses actually incurred in correcting the violation.

4.19 **Maintenance of Drainage Areas.** Each owner or occupant of any Site or Lot shall properly maintain the drainage area between the street and the property line. Drainage pipes, where necessary for entrances and sidewalks, shall be installed by the owner/occupant of the Site or Lot.

4.20 **Control of Surface Water Run-off.** Except for drainage into storm water drainage or retention areas provided by Declarant the owner/occupant of each Site or Lot shall be responsible for the retention, control, storage and disposal of surface water run-off, so that surface water flowage from the Site after development is no greater than existed (100 year event) prior to development. The owner/occupant of each Site shall be responsible for the construction of any facilities needed to control storm water run-off, and for the costs of any governmental permits relating thereto. The owner/occupant of each site shall maintain the valley drainage area between the street and the property lines. Drainage pipes, where necessary for entrances, shall be installed by the site owner or occupant.

## ARTICLE V
## APPROVAL OF USE, PLANS, AND SUBDIVISION OF LOTS

5.01 **Approval of Use of Site.** At the time of the sale of a Site or Lot the Industrial Development Authority shall approve the Site or Lot for a particular industrial use. The approved use of the Site and the buildings erected thereon shall not be changed or modified without the consent of the Industrial Development Authority in writing, and such consent shall not be unreasonably withheld as long as the requested change is a permitted use and not a prohibited use.

5.02 **Approval of Construction Plans.** Before commencing the construction or alteration of any buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to any Site or Lot, the owner, lessee or occupant of the Site or Lot shall first submit complete plans and specifications including landscape plans, sealed by an Architect or Engineer, registered in Kentucky, to the Declarant for its written approval, as hereinafter provided. No improvement shall be erected, placed, altered, maintained or permitted on any Site or Lot until such plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor, structural design, roads, parking areas, sidewalks, storm water drainage, signs, landscaping, exterior lighting, or any other requirement contained in this covenant, shall have been submitted to and approved in writing by Declarant. Accompanying the initial submission of plans shall be a plan review fee of seven hundred fifty dollars ($750) to be paid to the Industrial Development Authority. Fees for subsequent development or changes will be actual cost or review only (if any is needed) by Industrial Authority engineering firm.

5.03 **Approval Requirements.** Approval shall be based, among other things, on materials used, fire safety, adequacy of site dimensions, storm drainage considerations, conformity and harmony of external design with neighboring structures, improvements, operations and uses; adequacy of screening; relation of topography, grade and finished ground elevation of the Site being improved to that of neighboring Sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these covenants. The Declarant shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

5.04 **Approval Time.** If Declarant fails either to approve or to disapprove such plans and specifications within sixty (60) days after the same have been submitted in writing to it, it shall be conclusively presumed that the Declarant has approved said plans and specifications, subject, however, to the restrictions contained in Article III hereof.

5.05 **Approval Declaration.** The Declarant, nor its individual members, successors or assigns, shall be liable in any manner whatsoever in damages to anyone submitting plans for approval, or to any owner or lessee of land affected by this Declaration, arising out of or in connection with the approval, disapproval or failure to approve any such plans. Every person who submits plans to Declarant, or its successors or assigns, for approval agrees, by submission of such plans, and every owner, occupant, or lessee of any of said property agrees, by acquiring title thereto or interest therein, that he will not bring any action, proceeding or suit against Declarant, or its members, successors or assigns, to recover any such damages. In case of conflict between plan review and the covenants herein contained, these covenants shall govern the rights and obligations of the parties.

5.06 **Subdivision of Lots or Sites.** No Site or Lot shall be subdivided without the prior written consent of the Industrial Development Authority, which shall be under no obligation to approve such subdivision.

## ARTICLE VI
## SEWAGE DISPOSAL

6.01 **Sewage.** Owners, lessees, assignees, and occupants of each Site or Lot shall be required to comply with all of the rules and regulations of the governing agency providing sanitary sewer service to the industrial park.

Industrial users of public sewerage systems may be required to perform pre-treatment of liquid waste prior to introduction thereof into the public sewers. The Morehead Utility Plant Board shall control the quantity and/or quality of sewage discharged into the sanitary sewerage system.

Plans for sanitary sewerage disposal shall be submitted to the Declarant, the Morehead Utility Plant Board, and all other applicable governmental agencies for approval. The plans shall include information relative to the types and quantities of pollutants involved in the manufacturing process within the particular industry to be located on the property, as well as information pertaining to the quantity of ordinary sewage that is expected to be discharged into the system. Discharge into the sanitary sewage system shall be prohibited until the plans and the actual construction is approved by the Industrial Development Authority, the Rowan County Sanitary Sewer District, and all other applicable governmental agencies.

6.02 **Monitoring Wells.** Any owner/occupant that operates below ground waste disposal lines or facilities; shall install, at appropriate locations on its property, as approved by the Authority and the regulatory agencies, monitoring wells for sampling groundwater below its property. Monitoring reports shall be periodically provided to the Authority and the regulatory agencies. The reports shall reflect monitoring for parameters related to the waste being handled. This paragraph shall not apply to facilities where only normal, domestic waste is being discharged.

## ARTICLE VII
## ENFORCEMENT

7.01 **Beneficiaries of Covenants; Covenants to Run with Land.** All restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of the Industrial Development Authority and each and every Lot or Site within the Industrial Park; shall create mutual, equitable servitude upon each Lot or Site in favor of every other Lot or Site; shall create reciprocal rights and obligations between the respective owners of all Lots or Sites and privity of contract between all owners/occupants of said Lots or Sites, their successors and assigns; and shall as to the owner of each Lot or Site, their successors and assigns, operate as covenants running with the land, for the benefit of all other Lots or Sites.

7.02 **Payment of Legal Expenses.** In the event that the Industrial Development Authority, its successors, or assigns, initiates legal proceedings to enforce these Protective Covenants against any of the property owners or occupants in the Park, if the Industrial Development Authority is successful in said legal proceedings the property owner or occupant against whom said legal proceedings were initiated shall be responsible for payment of the Declarant's attorneys fees, court costs and other litigation expenses.

7.03 **Inspection.** Declarant may at any reasonable time, enter and inspect any Lot or Site, and the improvements located thereon to ascertain compliance with these Protective Covenants.

7.04 **Failure to Enforce Not a Waiver of Rights.** The failure of Declarant or any owner to enforce any covenant herein contained shall in no event be deemed to be a waiver of Declarant's right to do so thereafter, nor of the right to enforce any other restriction or covenant contained herein.

7.05 **Choice of Law and Forum.** The enforcement, construction, interpretation and any other disputes concerning these Protective Covenants shall be governed by the laws of the Commonwealth of Kentucky; and the Rowan Circuit Court, Kentucky, shall be the Court of exclusive jurisdiction concerning any litigation arising out of or related to these Protective Covenants, and all owner, lessees, assignees and occupants of each industrial Site or Lot in the Industrial Park hereby submit themselves to the jurisdiction of the Rowan Circuit Court, Kentucky, insofar as any litigation arising out of these Protective Covenants is concerned.

## ARTICLE VIII
## TERM OF COVENANTS, TERMINATION, MODIFICATION AND ASSIGNMENTS OF DECLARANT'S RIGHTS AND DUTIES

8.01 **Term of Covenants.** This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of thirty (30) years from the date hereof.

8.02 **Termination and Modification.** This Declaration and any provision hereof, may be terminated, extended, modified or amended by the Declarant, with the written consent of the owners of at least seventy-five percent (75%) of the acreage of the entire Property, exclusive of common areas and land dedicated to public use. At least one week prior to any action, notice of the proposed action shall be given to each owner of property in the Industrial Park and each such owner shall have an opportunity to speak at a hearing to be held at the time and place stated in the notice. No such termination, extension, modification or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the Office of the Clerk of the Court, Rowan County, Kentucky.

8.03 **Assignments of Declarant's Rights and Powers.** Any and all rights and powers of the Declarant herein contained may be assigned to a successor corporation or association which will assume the duties of Declarant and the rights and powers herein granted to the Declarant. If at any time Declarant ceases to exist and has not made such as an assignment, or has no successor, these Protective Covenants may be enforced by the County of Rowan.

## ARTICLE IX
## VARIANCE

9.01 **Variance.** Whenever it appears to the Industrial Development Authority that any provision contained in these covenants would work an undue hardship upon the owner, prospective owner or occupant of any portion of the Property because of Site or Lot size or shape, topography or any other reason, then the Industrial Development Authority may grant relief from the operation of these covenants in the form of a variance. At least one week prior to any action, notice of the proposed action shall be given to each owner of property in the Industrial Park and each such owner shall have an opportunity to speak at a hearing to be held at the time and place stated in the notice. Any such variance shall be limited in scope to that necessary to provide relief, and shall maintain the spirit and intended effect of these covenants. The decision of the Industrial Development Authority as to variance requests shall be final and not subject to attack in any court by any owner, assignee, successor, or occupant seeking the variance.

## ARTICLE X
## MISCELLANEOUS PROVISIONS

10.01 **Constructive Notice and Appearance.** Every person who now or hereafter owns, occupies or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said Property.

10.02 **Rights of Mortgagees.** None of these Protective Covenants shall in any way reduce the security, affect the validity of, or prohibit foreclosure by Mortgagees on any mortgages now in effect or hereinafter created against

any of the Property in the Industrial Park; provided, however, that if any portion of the Property is sold under a foreclosure of any such mortgage, said property shall be sold, and any purchaser at such sale, and his successors and assigns, shall hold any and all property so purchased, subject to all of the terms, conditions, restrictions and provisions of this Declaration.

10.03 **Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

## ARTICLE XI
## RIGHT OF PURCHASE

11.01 If, after the expiration of two (2) years from the date of execution of a sale or lease of any portion of the Property from the Industrial Development Authority, the purchaser or lessee shall not have started in good faith the construction of an approved building upon said Site or Lot, the Declarant shall have the right and option of refunding ninety-five percent (95%) of the purchase price paid and retaking possession of the premises.

Upon tender of the refund of said ninety-five percent (95%) of the purchase price, the property owner shall reconvey title to the Declarant within sixty (60) days thereafter, free and clear of any mortgages, liens and encumbrances.

## ARTICLE XII
## ENVIRONMENTAL REQUIREMENTS

12.01 The Owner of the site shall use, operate and maintain the site in compliance with all laws, including without limitation those relating to the generation, use, handling, production, disposal, discharge, transportation or storage of Hazardous Material (as defined below).

12.02 The Owner of the site shall protect, indemnify and hold the Industrial Development Authority and its directors, officers, officials, members, employees and agents, harmless from and against any and all claims, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments, settlements, awards, costs and expenses, including without limitation reasonable attorneys' fees and costs and expenses of investigation, litigation and proof, which arise out of or relate in any way to the generation, use, handling, production, transportation, disposal or storage of any Hazardous Material on, under, over or about the Property (all of the foregoing hereinafter collectively referred to as "Expenses"), including without limitation (i) all foreseeable and unforeseeable damages arising in connection with (A) the use, generation, storage, discharge or disposal of Hazardous Materials by the Owners, lessees, assignees and occupants of the site or by persons acting on behalf of or at the direction of the same, or (B) any residual contamination affecting any natural resource or the environment, and (ii) the costs of any required or necessary repair, cleanup, or detoxification of the Property and/or any real property adjacent to the Property (the "Adjacent Premises), and the preparation of any closure or other plans required in connection with such cleanup or detoxification thereof.

12.03 The owner/occupant of each site agrees that any Hazardous Material generated, used, handled, produced,

disposed, discharged, transported or stored by or at the direction of the owner/occupant, or by or at the direction of any agent or employee of the owner/occupant shall comply with all applicable laws, and shall be deemed to be the sole activity of the owner/occupant. The owner/occupant shall and hereby does assume any and all liability for any acts or omissions of the owner/occupant, its employees, agents, officers, members and directors relating to or connected with Hazardous Materials. All indemnifications the Regional Industrial Authority by the owner/occupant set forth in this Agreement shall be continuing indemnifications, and shall remain in full force and effect notwithstanding the expiration or termination of this Agreement.

12.04 As used herein, the term "Hazardous Material" shall mean: (i) oil, flammable substances, explosives, radioactive materials and other substances, materials or pollutants (1) which pose a hazard to the Property and/or Adjacent Premises (2) which pose a hazard to persons on or about the Property and/or Adjacent Premises, (3) the use of which causes the site to be in violation of any Laws, or (4) which are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", or "toxic substances" or words of similar import under any Laws or under policy guidelines or other publications adopted or promulgated pursuant to any Laws, including without limitation (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq., (B) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801, et seq., (C) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., (D) the Clean Air Act, as amended, 42 U.S.C. 7412, (E) the Toxic Substance Control Act, 15 U.S.C. 2601

et seq., (F) the Clean Water Act, as amended, 33 U.S.C. 1317 and 1321(b)(2)A, and (G) rules, regulations, ordinances and other publications adopted or promulgated pursuant to the aforementioned Laws, (ii) asbestos in any form which is or could become friable, and urea formaldehyde foam insulation, and (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or Law, or which could pose a hazard to the health and safety or property interests of the Industrial Development Authority or their respective officials, employees, members and agents, or to the occupants of any Adjacent Premises.

## ARTICLE XIII
## VARYING REQUIREMENTS IN THE LAKE PARK AREA OF THE PARK

The following modifications of the previous provisions of these covenants shall be applicable to that specific portion of the Industrial Park known as Lake Park, and which is set aside for the establishment and location of small businesses. This area is identified on the plat of record described in Exhibit A.

**13.01 ARTICLE 4.01. Minimum Setback Lines and Standards.**

The minimum setbacks in this area shall be:

Front setback .....50 feet
Side setback.....25 feet
Rear setback.....25 feet

**13.02 ARTICLE 4.06B. Parking.**

Employee parking will be permitted in front of the building.

**13.03 ARTICLE 4.08B. Building and Parking Area Coverage Limits.**

Total area covered by a building structure shall not exceed fifty percent (50%) of the total site area. Total area covered by building and paving shall not exceed seventy-five (75%) percent of the total site area.

## ARTICLE XIV

## COVENANTS, CONDITIONS AND RESTRICTIONS OF KENTUCKY ECONOMIC DEVELOPMENT FINANCE AUTHORITY

The Industrial Park Property was purchased through a Commonwealth of Kentucky Local Government Economic Development Fund Regional Multi-County Grant and as a condition of said Grant the MMRC Regional Industrial Development Authority, Inc., entered into a Declaration of Covenants, Conditions and Restrictions with the Kentucky Economic Development Finance Authority dated June 25, 1998, of record in Deed Book 186, Page 358-363, Rowan County Court Clerk's Office, and said Declaration of Covenants, Conditions and Restrictions are hereby incorporated by reference in this Declaration, the same as if fully set forth herein, and the Property, and each Lot and Site, shall be developed and used in accordance therewith.

IN TESTIMONY WHEREOF, witness the signatures of the Declarant, by and through its authorized officers, this 25th day of August, 1999.

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|---|---|
| | MMRC REGIONAL INDUSTRIAL AUTHORITY, INC.<br>BY: _____<br>CHAIRMAN |

STATE OF KENTUCKY,

COUNTY OF ROWAN,

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that the foregoing Amended and Restated Protective Covenants was on this date produced before me by Terry Enson, as Chairman of the Menifee, Morgan, Rowan and Carter Regional Industrial Development Authority, Inc., and was sworn by him and acknowledged and delivered by him to be the act and deed of said Industrial Development Authority.

| | | | |
|---|---|---|---|
| My commission expires | 9/22/2002 | | |
| Witness my signature this | 25th | day of August | 1999. |

| | |
|---|---|
| | [signature] NOTARY PUBLIC, STATE OF KENTUCKY AT LARGE |

DOCUMENT NO: 41858
RECORDED ON: AUGUST 25,1999 03:38:36PM
TOTAL FEES: $27.00
COUNTY CLERK: JEAN W. BAILEY
COUNTY: ROWAN COUNTY
DEPUTY CLERK: LETISHA GLOVER [signature]



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