

## **GUARANTY AGREEMENT**

**THIS GUARANTY AGREEMENT** (the "Guaranty"), made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2021, by and between the Hopkinsville Industrial Foundation, (hereinafter referred to as the "Guarantor" or "HIF"), the Christian County Fiscal Court (hereinafter referred to as "Fiscal Court") and the City of Hopkinsville, (hereinafter referred to as "the City").

### **W I T N E S S E T H:**

**WHEREAS**, HIF will secure a loan from Planters Bank, in the amount not to exceed \$3,300,000.00, for the purpose of the construction of a 100,800 square foot industrial building to be located in the Commerce Park on property owned by HIF; and

**WHEREAS**, HIF will secure a commitment from Planters Bank for a fixed rate loan at the interest rate of 3.00% for a period of 60 months, renewable thereafter on an annual basis until the industrial building is sold. The interest rate charged on any extension beyond the initial term of this loan will be at New York Prime minus .25%. During the term of the loan or any extension thereof, interest will be billed quarterly on the outstanding balance of the loan to HIF, the borrower. Upon notice by HIF to Fiscal Court and the City, each will reimburse HIF for fifty percent (50%) of the interest due the bank, and

**WHEREAS**, upon the sale or other disposition of the industrial building that is the subject of this Agreement, Fiscal Court and the City will be reimbursed by HIF for all payments made to HIF for reimbursement of interest paid by HIF to the bank.

**NOW, THEREFORE**, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor hereby covenants and agrees with Fiscal Court and the City as follows:

1. The execution, delivery and performance of this Guaranty will not conflict with or constitute a violation or breach of, or a default under any indenture, mortgage, deed of trust, note, note agreement, or any other agreement, or any other requirement of law to which the

Guarantor is a party, by which it is bound, or to which its respective property is subject.

2. The Guarantor covenants and agrees that all of the covenants of the Guarantor herein shall apply in full force and effect until any indebtedness from HIF to Fiscal Court and the City has been paid in full.

3. The Guarantor hereby absolutely and unconditionally guarantees to Fiscal Court and the City the full and prompt payment in lawful money of the United States of America, all interest paid to the bank by HIF and subsequently reimbursed by Fiscal Court and the City upon the sale and settlement of the property subject to this agreement.

4. This Guaranty shall be and is a continuing and absolute Guaranty and shall remain in full force and effect until all indebtedness is paid in full. No invalidity, irregularity, or unenforceability of all or any part of any liability or obligation from HIF to the Fiscal Court and the City shall affect, impair or be a defense to this Guaranty, which shall remain the unconditional obligation of the Guarantor until each, every and all of the terms and conditions of this Agreement have been satisfied.

5. This is a guarantee of payment within the meaning of K.R.S. 355.3-419 and not merely a guarantee of collection. The Guarantor expressly waives any right to require that any action be brought against, or to require that resort be had to, any collateral security or to any other guaranty before a demand for payment is made by the Fiscal Court and the City upon the Guarantor.

6. The obligations of the Guarantor under this Guaranty shall be absolute and unconditional. The obligations of the Guarantor shall not be affected, impaired, modified, released or limited by any occurrence or condition whatsoever without limitation, by any of the following, whether or not with notice to or the consent of the Guarantor:

(a) The compromise, settlement, release, waiver, renewal, extension,

indulgence, termination, change in or modification of any of the obligations and liabilities contained in any Loan Agreement, Financing Statement and Promissory Note;

(b) The failure to give notice to Guarantor of the occurrence of any event of default as defined in any Loan Agreement, Financing Statement and Promissory Note;

(c) The assignment or mortgaging or the purported assignment or mortgaging of all or any part of the interest of the Guarantor;

(d) The waiver of the payment, performance, or observance by Fiscal Court and the City or the Guarantor, of any of the obligations, covenants, or agreements of any of them contained in any Loan Agreement, Financing Statement and Promissory Note, or this Guaranty;

(e) The extension of the time for payment of any principal of or interest on the Loan or under this Guaranty, or the time for performance of any other obligations, covenants, or agreements under or arising out of any Promissory Note, Financing Statement and Loan Agreement, or the extension or renewal thereof;

(f) Any impairment, modifications, or amendment, whether material or otherwise, of any obligations, covenant, agreement, or remedy set forth in any Loan Agreement, Financing Statement, Promissory Note, or this Guaranty, whether in bankruptcy, resulting from the operation of any present or future provision of the United States Bankruptcy Code, or other Statute, or from the decision of any court;

(g) The taking or the omission of taking of any action, or the assertion or exercise by Fiscal Court and the City of any rights or remedies under this Guaranty or delay in or failure to assert or otherwise exercise any of such rights or remedies;

(h) Any failure, omission, delay or lack on the part of the Fiscal Court and the City to enforce, assert or exercise any right, power or remedy conferred on Fiscal Court and the City in this Guaranty, or any other act or acts on the part of Fiscal Court and the City;

(i) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshalling of assets and liabilities, receivership, insolvency, or bankruptcy, assignments for the benefit of creditors, or re-adjustment of, or other similar proceedings affecting any Guarantor, or the Fiscal Court and the City, or any of the assets of any of them, or any allegation or contest of the validity of this Guaranty, in any such proceeding;

(j) The default or failure of the Guarantor to perform fully any of their obligations set forth in this Guaranty.

7. The Guarantor unconditionally waives (a) notice of any of the matters referred to in Section 6 hereof and (b) any demands, proof, notice of dishonor or protest, or notice of nonpayment of the principal of or interest on any Loan, or other payments of money required by any Loan Agreement, Financing Statement and Promissory Note.

8. No act of commission or omission of any kind or at any time upon the part of the Fiscal Court and the City, in respect of any matter whatsoever, shall in any way affect or impair the rights of the Fiscal Court and the City to enforce any right, power or benefit under this Guaranty, and no setoff, claim, reduction or diminution of any obligation, or any defense or any kind or nature which the Guarantor has or may have against the Fiscal Court and the City shall be available to the Guarantor in any suit or action brought by the Fiscal Court and the City to enforce any right, power or benefit under this Guaranty. This Guaranty shall be construed as a waiver by the Guarantor of any rights or claims it may have against the Fiscal Court and the City under this Guaranty or otherwise, as it is the intention of this Agreement and the guaranty of payment provided for herein that the Guarantor shall be unconditionally and absolutely obligated to perform fully all of the obligations, agreements, and covenants hereunder for the benefit of the Fiscal Court and the City.

9. All references to the respective parties shall be deemed to refer to their

respective successors or assigns.

10. No delay or omission by the Fiscal Court and the City to exercise any right or power accruing upon any default, omission or default of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised as from time to time and as often as may be deemed expedient by the Fiscal Court and the City. In order to entitle the Fiscal Court and the City to exercise any remedy reserved to Fiscal Court and the City in this Guaranty, no one shall be required to give notice, other than such notice as may be herein expressly required. If any provision contained in this Guaranty shall be breached by the Guarantor and thereafter duly waived by the Fiscal Court and the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the Fiscal Court and the City.

11. All notices, requests, demands or other communications required or permitted to be given hereunder, shall be in writing, and sent by registered or certified mail, return receipt requested, postage paid, addressed as follows:

If to the Fiscal Court:

Christian Fiscal Court  
515 Weber Street  
Hopkinsville, KY 42240

If to the City:

City of Hopkinsville  
715 South Virginia Street  
Hopkinsville, KY 42240

If to the Guarantor:

Hopkinsville Industrial Foundation  
2800 Fort Campbell Blvd.  
Hopkinsville, KY 42240

12. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof, and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute on and the same instrument. In the event of conflict of provisions, the copies retained by Fiscal Court and the City shall be deemed the original for purposes of comparison of terms.

13. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any other part thereof.

14. The Guarantor covenants that it will be subject to service of process in the Commonwealth of Kentucky. This Guaranty, and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed exclusively by the applicable laws of the Commonwealth of Kentucky.

15. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Guaranty is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Guaranty. This Guaranty and all of the covenants, conditions and provisions hereof are intended to be and are for the sole and exclusive benefit of the parties hereto, as herein provided.

16. Notwithstanding any other provisions of this Guaranty Agreement, the amount of the maximum aggregate liability of the Guarantor with respect to the guaranteed

obligations shall not exceed the sum of interest reimbursed to HIF by Fiscal Court and the City, in addition with all accrued costs and fees incurred, if any, by Fiscal Court and the City.

**IN WITNESS WHEREOF**, the undersigned parties have caused this Agreement to be executed as of the month, day and year first above written.

**Hopkinsville Industrial Foundation**

BY: \_\_\_\_\_  
Chairman

**Christian Fiscal Court**

BY: \_\_\_\_\_  
Steve Tribble, County Judge Executive

**City of Hopkinsville**

BY: \_\_\_\_\_  
Wendell Lynch, Mayor





Prepared By:

---

John T. Soyars  
Christian County Attorney  
209 East 14<sup>th</sup> Street  
PO Box 24  
Hopkinsville, KY 42241-0024  
(270) 887-4114