

**LAND USE RESTRICTION AGREEMENT  
TO CREATE AN EQUITABLE SERVITUDE**

This Land Use Agreement to Create an Equitable Servitude, herein called "Agreement," is entered into by Howden Buffalo Inc., having offices at 338 South Broadway, New Philadelphia, Tuscarawas County, Ohio and herein called "Grantor," and the Ohio Environmental Protection Agency, herein called "Ohio EPA," this 7<sup>th</sup> day of November, 2003, at Columbus, State of Ohio. The land use restriction created herein touches and concerns an approximately seventeen (17) acre tract of real property with improvements, owned by Grantor and located at 338 South Broadway, New Philadelphia, Tuscarawas County, Ohio, herein called the "Subject Property," in that it is intended to limit the use of the Subject Property and restrict certain activities from occurring on the Subject Property.

It is the intent of the Grantor and Ohio EPA, herein collectively called the "Parties," that the covenants, terms, conditions and restrictions of this Agreement be binding upon, and inure to the benefit of, the Parties and continue as a servitude running in perpetuity, or until terminated or modified as provided herein, with the Subject Property. It is the further intention of the Parties that the land use restriction described herein be enforceable at law or in equity by Ohio EPA against Grantor for as long as Grantor shall own the Subject Property, any Transferee, as defined herein, and/or any other future owner of any interest in the Subject Property.

Grantor, Joy Technologies, Inc. (a former property owner) and Ohio EPA entered into Director's Final Findings and Orders, journalized on January 29, 2001, for the purpose of implementing the soil remedial alternative for the Subject Property, as described in the Decision Document, dated February 2000. The Decision Document, which is an enforceable part of the Director's Final Findings and Orders, includes a description of the use restrictions contained in this Agreement.

1. For purposes of this Agreement, Subject Property is defined as follows:

That property acquired by Grantor, as recorded in Deed Book Volume 716, Page 413 in the office of the County Recorder of Tuscarawas County and as more particularly described in Exhibit A, attached hereto.

2. Polychlorinated biphenyls ("PCBs") are present in concentrations that exceed residential risk-based cleanup goals set forth in the Decision Document, dated February 2000, in an area in the northwest corner of the Subject Property, herein called the "PCB Area." For purposes of this Agreement, the PCB Area is defined as follows:

An area of 0.110 acres, more or less, in the northwest corner of the Subject Property, as more particularly described in Exhibit B, attached hereto.

Land Use Restriction Agreement  
 Howden Buffalo, Inc.  
 Page 2

3. In consideration of the Grantor's use of an industrial land use restriction and prohibition against the installation of wells into groundwater and groundwater use as part of the remedial action for the Subject Property and PCB Area, Grantor agrees to impose and comply with the following restrictions on the Subject Property and the PCB Area and comply with the covenants, terms and conditions related thereto:
  - a. The Subject Property and the PCB Area shall only be used for industrial land use, as that term is defined in Ohio Administrative Code Section 3745-300-08 (B)(2)(c)(iii). No residential use of the Subject Property and/or the PCB Area shall be allowed.
  - b. The groundwater underlying all or any portion of the Subject Property and the PCB Area shall not be used for any purpose without Ohio EPA approval.
  - c. Groundwater wells, other than wells used for monitoring purposes, will not be installed in the Subject Property or in the PCB Area.
  - d. No digging or excavation shall occur in the PCB Area unless prior written approval has been provided by Ohio EPA.
4. The covenants, terms, conditions and restrictions of this instrument shall be binding upon, and inure to the benefit of, the Grantor and the State of Ohio and their successors in interest and assigns and any Transferee, and shall continue as a servitude running in perpetuity with the Subject Property and PCB Area, subject to termination and modification as described below. The term "Grantor," wherever used herein, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor," and its successors in interest liable under Ohio law. The term "Transferee," wherever used herein, shall mean any future owner of any interest in the Subject Property and/or the PCB Area, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
5. Within thirty (30) days after the execution of this Agreement by the Parties, Grantor shall record, in the office of the County Recorder of Tuscarawas County, in an instrument whose recording is provided for by law, this Agreement.
6. Within ten (10) days after recording the Agreement, as noted above, the Grantor shall certify to Ohio EPA that the Agreement has been filed for recording, and include with the certification a file and date stamped copy of the land use restriction.
7. The Grantor or a Transferee may request written approval for a use of the Subject Property or the PCB Area which is not specifically permitted by this Agreement by submitting a written petition, via certified mail, to the director of Ohio EPA for termination or

modification of this Agreement. Any such request which constitutes a change in the specific prohibition may only be granted by the director of Ohio EPA, based on the standard described below. In such event, the petition for modification or termination shall state the specific provision(s) sought to be modified or terminated and shall further include evidence demonstrating that one or more of the following conditions have been met:

- a. the prohibition against the use of groundwater and the drilling of wells in groundwater may be terminated when the cleanup goals for groundwater set forth in Table 6 of the Decision Document, dated February 2000, have been met.
  - b. the limitation of the Subject Property to industrial use may be terminated, except for the PCB Area, when the residential risk-based cleanup goals for volatile organic compounds (VOCs) set forth in Table 7 of the Decision Document have been met.
  - c. the prohibition against digging or excavation in the PCB Area and its limitation to industrial use may be terminated if remedial action is taken to reduce the risk associated with the PCB contamination to acceptable levels.
8. The petition for termination or modification of this Agreement will be considered by the director of Ohio EPA only when it presents new and relevant information not previously considered prior to entering into this Agreement. The director of Ohio EPA will issue a determination based upon the criteria set forth in paragraph 7 above.
9. The Grantor shall be considered in violation of the Director's Final Findings and Orders entered into with Ohio EPA and Joy Technologies, Inc. and journalized on January 29, 2001, if this Agreement is violated or breached by Grantor. For violation or breach of this Agreement or any terms or conditions of the land use restrictions by Grantor or any Transferee, the director of Ohio EPA shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to obtain injunctive relief in order to prevent violation or breach of this Agreement. Failure to timely enforce the foregoing covenant and use restriction by any party shall not bar subsequent enforcement by such party and shall in no manner be deemed a waiver.
10. Grantor agrees to include in any instrument conveying any interest in any portion of the Subject Property or the PCB Area, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

Land Use Restriction Agreement  
Howden Buffalo, Inc.  
Page 4

THE INTEREST CONVEYED HEREBY IS SUBJECT TO A LAND USE RESTRICTION AGREEMENT, DATED \_\_\_\_\_, 2003, RECORDED IN THE PUBLIC LAND RECORDS ON \_\_\_\_\_, 200\_\_\_\_, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF, AND ENFORCEABLE BY, THE STATE OF OHIO. THE SUBJECT PROPERTY AND THE PCB AREA SHALL ONLY BE USED FOR INDUSTRIAL LAND USE, AS THAT TERM IS DEFINED IN OHIO ADMINISTRATIVE CODE SECTION 3745-300-08 (B)(2) (c)(iii). NO RESIDENTIAL USE OF THE SUBJECT PROPERTY AND/OR THE PCB AREA SHALL BE ALLOWED. THE GROUNDWATER UNDERLYING ALL OR ANY PORTION OF THE SUBJECT PROPERTY AND THE PCB AREA SHALL NOT BE USED FOR POTABLE PURPOSES. GROUNDWATER WELLS, OTHER THAN WELLS USED FOR MONITORING PURPOSES, WILL NOT BE INSTALLED IN THE SUBJECT PROPERTY OR IN THE PCB AREA. NO DIGGING OR EXCAVATION SHALL OCCUR IN THE PCB AREA UNLESS PRIOR WRITTEN APPROVAL HAS BEEN PROVIDED BY OHIO EPA.

Within ten (10) days after the date any such instrument of conveyance is executed, Grantor must provide the director of Ohio EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Prior to executing any instrument conveying any interest in any portion of the Subject Property and/or the PCB Area, including but not limited to easements, deeds, leases and mortgages, Grantor shall notify the Transferee of the existence of the land use restrictions by providing a copy of this Agreement to the Transferee.
12. Grantor hereby covenants to and with the State of Ohio that the Grantor is lawfully seized in fee simple of the Subject Property and the PCB Area, that the Grantor has a good and lawful right and power to sell and convey them and any interest therein, that the Subject Property and PCB Area are free and clear of encumbrances, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.



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