

PROTECTIVE COVENANT

FOX HEAD INDUSTRIAL PARK EXPANSION

**CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS
& EASEMENTS EFFECTING PROPERTY OF
TOWNSHIP OF FOX, ELK COUNTY, PENNSYLVANIA**

KNOW ALL MEN BY THESE PRESENTS that the Township of Fox does hereby declare that the following protective and restrictive covenants are applicable to the plot of land hereinafter described in Clause I; and it further declares that all real property described in and referred to in Clause I hereof is and shall be held transferred, sold, conveyed, and occupied, subject to the conditions, covenants, restrictions, reservations and easements hereinafter set forth.

**CLAUSE I
DEFINITION OF TERMS**

"Building site" shall mean any lot or portion thereof or two or more contiguous lots or portions thereof or a parcel of land upon which a commercial, industrial, restaurant or cafeteria, office building and appurtenant structures may be erected in conformance with the requirements of these covenants.

"Township" or **"Grantor"** shall mean the Fox Township Board of Supervisors, its successors and assign unless the context indicates otherwise.

"Improvements" shall mean and include a commercial, industrial, restaurant or cafeteria, office building or buildings, outbuildings appurtenant thereto parking areas, loading areas, fences, masonry walls, hedges, lawns, mass plantings and any structures of any type or kind located above ground.

"Building line or lines" shall mean the minimum distance which commercial, industrial, restaurant or cafeteria, office building or buildings and outbuildings or any structures of any type or kind located above ground shall be set back from property or street lines.

"Side building site line" shall mean the boundary or property line dividing two adjoining building sites.

"Front building site line" shall mean the boundary or property line dividing two facing building sites or street lines.

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is and shall be leased, conveyed, transferred, occupied or sold subject to the conditions, covenants, restrictions, reservations and easements set forth herein is located in the Township of Fox, County of Elk, Commonwealth of Pennsylvania and is more particularly described as follows, to wit: SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE AS IF SET FORTH AT LENGTH HEREIN.

CLAUSE II GENERAL PURPOSES OF CONDITIONS

The real property described in Clause I hereof is subjected to the conditions, covenants, restrictions, reservations and easements hereby declared to insure proper use and appropriate development and improvement of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to guard against the erection thereon of structures built of improper or unsuitable materials; to insure adequate and reasonable development of aid property; to encourage the erection of attractive improvements thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from streets and adequate free spaces between structures; and, in general, to provide adequately for a high type and quality of improvement in said property.

CLAUSE III GENERAL RESTRICTIONS

A. All trade or activity shall conform to the regulations set forth within the Fox Township Zoning ordinance. Any business or use prohibited by this and any other applicable ordinances and regulations of Fox Township, Elk County and other government authorities having jurisdiction over the property shall not be permitted. If any dispute shall arise as to the meaning of this paragraph the final decision as to its applicability shall be made by the Fox Township Board of Supervisors, its successors or assigns.

B. These covenants shall and do hereby provide that no improvements as herein defined shall be erected, placed or altered on any building site in said development until the building or other improvement plans, specifications and plot plan showing the location of such improvements on the particular building site have been submitted and approved in writing, as to conformity and harmony of external design with existing structures in the development, and as to location of the improvements on the building sites, giving due regard to the anticipated use thereof as same may affect adjoining structures, uses and operations and as to location of the improvements with respect to topography, grade and finished ground elevation by the Fox Township Board of Supervisors, its successors or assigns unless and until such right has been expressly

assigned and then such right will pass to such assignee. Provided however, that the Grantor its successors or assigns shall not be liable in damages into anyone so submitting plans for approval or to any owner or owners of land conveyed by this instrument by reason of mistake in judgment, negligence nor nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval or failure to approve any such plans; likewise anyone so submitting plans to the Grantor, its successors and assigns, for approval, by the submitting of such plans, and any owner by so acquiring title to any of the property covered hereby, agrees that he or it will not bring any action or suit to recover for any damages against the Grantor, its successors or assigns. In the event Grantor, its successors or assigns fails to approve or disapprove such design and location sixty (60) days after said plans and specifications have been submitted, this covenant will be deemed to have been complied fully with. If the construction, or alteration of improvements is begun in violation of the terms and conditions of this Section C, or without the written approval required in other sections hereof, and no suit to enjoin the erection, establishment, or alteration of such improvements has been commenced prior to the completion hereof, this covenant will be deemed to have been fully complied with.

C. No structures or buildings shall be located closer than twenty (20) feet to any side building site line or closer than forty (40) feet to the rear property line [accessory buildings shall be a minimum of twenty (20) feet from any rear lot line. It being the intent that an open area of at least forty (40) feet shall exist between all adjacent but separately owned improvements at sides. No portion of any building shall be closer than forty (40) feet from the road right-of-way excepting the portion which may be used exclusively for offices which portion may not be closer than twenty-five (25) feet to road right-of-way.

D. No building or structures aboveground shall extend beyond the building lines, and it is hereby declared that said area between the building lines and the property lines is to be used either for open landscaped and green areas or for off-street surfaced parking areas. If said area is to be landscaped, it shall be done attractively with lawn, trees, shrubs, etc. according to plans first approved in writing by the Grantor, its successors or assigns. If said area is to be used for off-street parking, the parking arrangement and surfacing must likewise be approved in writing by the Grantor, its successors or assigns. Any landscaped areas shall be properly maintained thereafter in a sightly and well-kept condition. Parking areas shall likewise be maintained in good condition, and shall comply with all ordinances and regulations of Fox Township.

E. It is contemplated that maneuvering of trucks and trailers be confined in as far as possible to the premises of each establishment. To that end, it is hereby provided that no loading docks extend beyond the forty (40) foot or the twenty (20) foot building lines hereinabove mentioned. Whenever a loading dock is to be located facing a street where the building line is within thirty (30) feet, and it appears that the nature of the business of the particular establishment using the premises contemplates the use of trucks exceeding twenty-five (25) feet in length, the end of any loading dock shall be located within the building for at least thirty (30) feet back of the building line to the end that, in general, such loading dock and every part thereof shall be at least thirty (30) feet from the nearest

right of way of the street on which said loading dock fronts. The actual depth of such loading dock within the building or structures shall be determined in connection with the building plans or improvement plans to be approved as provided in Section C.

F. Power used in or developed or obtained for the operation of any establishment within the confines of the area subjected to these restrictions shall be confined to electrical or substantially equivalent type of power using only coal, oil, gasoline, or liquid petroleum products or similar combustible materials in its production, or other products which do not produce excessive smoke, odors, radiation, or fumes in violation of governmental restrictions and regulations.

G. For each manufacturing, jobbing, warehousing, wholesaling or other use permitted in the area subject to these covenants, there shall be provided off-street automobile parking facilities, such facilities to be approved in writing by Grantor, its successors or assigns, but to be based generally, but not specifically at the minimum rate of 1-1/2 parking spaces for each two employees to be employed on the premises by the original occupant thereof.

H. The storage of bulk commodities shall be confined to locations and screening thereof as approved in writing by the Grantor, its successors or assigns.

I. Right of way easements may be granted by the Grantor, its successors and assigns on any property hereby restricted so long as it is the owner in fee simple of said property. The same right is reserved to any subsequent owner in fee simple of property covered by these covenants.

J. No billboards or advertising signs other than those identifying the name, business and products of the person or firm occupying the premises shall be permitted and must conform to Fox Township Zoning and other applicable ordinances.

K. No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the lot lines established herein except upon approval in writing by the Grantor, its successors or assigns.

L. No refining or mining operation of any kind or quarrying shall be permitted upon or in any of the building sites subject to these covenants; nor shall tanks, tunnels, mineral excavations or shafts be permitted upon, under or in any of the building sites covered by these covenants, unless waived by the Grantor, its successors and assigns.

Tanks shall be permitted in or adjacent to any building where they are necessary in the manufacturing or industrial process. Fuel oil storage tanks as a part of the heating equipment of any establishment shall be permitted only if located underground and in full compliance with rules and regulations of any governmental agency or agencies having jurisdiction over such matters and at a depth and in a location as approved by Grantor, its successors or assigns, in writing. Bulk storage of all liquids, including gasoline or petroleum products on the outside of buildings, shall be permitted only upon written

consent of Grantor, its successors or assigns, in locations as approved by Grantor,. its successors or assigns, in writing and if same be underground at a depth as approved by Grantor, its successors or assigns, in writing and subject to compliance with rules and regulations of any governmental agency or agencies having jurisdiction over such matters.

M. Whenever the written approval of the Grantor, its successors or assigns is required in connection with any improvements to be installed, erected, or altered or is otherwise required by the provisions of these covenants, the same shall be governed by the conditions set forth in Section C hereof.

N. Each of the conditions, covenants, restrictions and reservations set forth above shall continue and be binding upon the Grantor, and upon its successors and assigns and upon each of them and all parties and all persons claiming under them for a period of thirty (30) years from September 5, 2007 and automatically shall be continued thereafter for successive periods of twenty-five (25) years each.

O. The covenants herein set forth shall run with the land and bind the present owner, its successors and assigns, and all parties claiming by, through or under it shall be taken to hold, agree, and covenant with the owner of said building sites, its successors and assigns and with each of them to conform to and observe said restrictions as to the use of building sites and the construction of improvements thereon; but no restrictions herein set forth shall be personally binding on any corporation, person, or persons except in respect to breaches committed during its, his/her or their use of, or title to said land: and Grantor, its successors or assigns, or the owner or owners of any of the above land shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions above set forth: in addition to ordinary legal action for damages and the failure of Grantor, its successors and assigns and the owner of any other lot or lots or building sites, hereby restricted to enforce any of the restrictions herein set forth at the time of its violation, shall in no event be deemed to be a waiver of the right to do so as to any subsequent violation. The violation of these restrictions shall not defeat nor render invalid the lien or any mortgage (or deed of trust) made in good faith and for value.

P. If any owner of any plot of land in Fox Head Industrial Park (the subject property herein), his heirs, executors, or its assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons, corporation or corporations, owning any real property situated in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons, corporation or corporations, violating or attempting to violate any such covenants, and either to prevent him or them or any corporation from so doing, or to recover damages or other dues for said violation.

CLAUSE IV
GRANT OF RIGHT TO REPURCHASE AND RIGHT OF FIRST REFUSAL

By the purchase of any building site located within the boundaries of the subject property herein, the purchaser and any subsequent purchaser(s) hereby grant to the Township of Fox the following rights.

Said rights shall be deemed covenants which run with the land and shall not be extinguished unless done so by writing duly executed by the Board of Supervisors of the Township of Fox and recorded in the Elk County Recorder's Office.

Township shall have, and is hereby given, the option of repurchasing any building site upon which construction is not begun within six (6) months after the plans for which have been approved in accordance with the provisions herein or any building site with improvements subsequently sold upon which no significant industrial business has been conducted for a period of six (6) consecutive months. As verification of this provision, Owner shall submit to the Township a quarterly progress report during the first year of operation and annually thereafter, depicting the amount of industrial business being conducted at their building site. The repurchase price shall be the same as the original purchase price in the former case and fair market value (as determined by the Elk County Tax Assessment for said site multiplied by the current State Common Level Ratio) in the latter case. Said option of repurchase may be exercised at any time as long as the site remains unimproved or, if improved, as long as no significant industrial business is conducted thereon.

It is further agreed that should any purchaser or subsequent purchaser(s), their grantees, successors or assigns, receive an offer to purchase any building site or any part thereof, and desires to accept the offer, or should he or it make any offer to sell same, he or it shall give Township ninety (90) days notice in writing of the offer, setting forth the name and address of the proposed purchaser, the amount of the proposed purchase price and all other terms and conditions of such offer, and Township shall have the first option to purchase the building site which is the subject of the offer by giving written notice to owner of its intention to purchase within the ninety (90) day period at the same price and on the same terms of any such offer, it being understood that in the event Township does not give notice of its intention to exercise the option to purchase within that period, this covenant and all of its terms and conditions shall nevertheless remain in full force and effect and owner and any purchaser or purchasers of the building site, or any part of them, shall be bound hereby and in the event that the premises set forth in the offer are not sold for any reason, Township shall have upon the same conditions and notice, the continuing first option to repurchase the building site or any part of them upon the terms of any subsequent offer or offers to purchase.

In the event that any of the above options are exercised, Owner shall convey a merchantable title in fee simple to the real estate by good and sufficient warrant deed, free from all encumbrances whatsoever, such as may insured by a reputable title insurance company.