

50289

DECLARATION OF PROTECTIVE COVENANTS

PROGRESS PARK

THIS DECLARATION, made this 21st day of August, 1998, by CHAMBERSBURG AREA DEVELOPMENT CORPORATION "CADC", Hereinafter referred to as "Developer",

Whereas, Developer is the owner of all that certain real property, hereinafter referred to as the "Property" or the "Park", consisting of 35.3552 Acres, located in the Borough of Chambersburg, Pennsylvania, on the western side of Progress road and acquired from T.K. Nitterhouse by deed dated 6/23/98. See Borough plan RE949 recorded in Deed Book 288G page 804.

Whereas, it is the desire and intention of Developer to develop all of the Property as a Commercial/Manufacturing Business Park; and,

Whereas, it is the desire and intention of Developer to impose upon the Property mutually beneficial Conditions, Standards and Covenants, hereinafter referred to as "Covenants", under a general plan of improvement for the benefit of all the Property, the improvements thereon and the future owners thereof.

Now, Therefore, Developer hereby declares that the Property is held and encumbered subject to the following Conditions, Standards and Covenants, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of the Conditions, Standards and Covenants shall run with the real Property and shall be binding on all parties having or acquiring any right, title or interest in the Property made subject hereto or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. The Conditions, Standards and Covenants are as follows:

I. INTRODUCTION

A. Purpose of covenants: The purpose of these Conditions, Standards and Covenants is to insure proper development and use of the Property, to protect the owner of each parcel against such improper development and use of surrounding parcels as will depreciate the value of his parcel, to prevent the erection on the Property of structures built of improper design or materials, to encourage the erection of attractive improvements at appropriate locations, to secure and maintain proper setbacks from streets and adequate for a high quality of improvement of the Property in accordance with a general plan.

B. **Term:** This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period commencing on the date hereof and expiring on December 31, 2013, at which time these restrictions shall automatically extend for successive periods of ten (10) years, unless owners of more than seventy (70%) percent of the acreage of the Property execute an instrument revoking or modifying such restrictions, and record the same in the Office of the Recorder of Deeds for Franklin County, Pennsylvania. Prior to December 31, 2013, these restrictions may be modified by the recording of an appropriate instrument in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, by the owners of more than seventy (70%) percent of the acreage of the Property.

C. **Definitions:**

- (1) **Cluster Site:** Shall mean and refer to a Site, as defined herein, containing two or more buildings under single ownership which are served by common parking areas on the Site and common egress and ingress drives to the Site.
- (2) **Developer:** Shall mean and refer to CADDC, its successors and assigns.
- (3) **Improvements:** Shall mean and include buildings, outbuildings, parking areas, loading areas, screening walls, retaining walls, hedges, mass planting, lawns, poles, signs, water lines, sewers, electrical and gas distribution facilities, and any structures of any type or kind.
- (4) **Owner:** Shall mean and refer to the holder of fee simple title to a Site, or one who is a tenant with an option to purchase (or one who has any other beneficial interest in the legal title).
- (5) **Site:** Shall mean and refer to an area of land within the Park in the same ownership either shown as one lot on a recorded plan, or if not so shown, described as the site for one or more buildings by the owner in a recorded instrument, whether or not in either case acquired at one time or previously so shown as more than one lot, or shown or described for the purpose of lease but not of conveyance as more than one lot. If an easement over any portion of a Site established by recorded instrument then exists or is reserved by Developer for any purpose whatsoever, the area of such portion shall be included in computing the area of that Site.
- (6) **Zoning Ordinance:** References to the Borough of Chambersburg Zoning Ordinance are to that Zoning Ordinance as passed by the Borough of Chambersburg Council on January 27, 1988, as amended from time to time.

II. LAND USE CRITERIA

A. Approval Committee: The Developer has created an Approval committee which shall interpret, enforce and implement these Covenants. Beginning in 1998, the Approval Committee shall consist of three persons selected at a meeting to be held at a time and place designated by the Developer each year in the month of January, as follows: one shall be appointed by Developer so long as it owns not less than twenty (20%) percent of the acreage of the Property; one shall be appointed by any Owner including CADC seized of fifty (50%) percent or more of the acreage of the Property; and, one shall be appointed by majority vote of the owners of the Property. In the event the Developer is not entitled to make such an appointment and/or there exists no Owner of fifty (50%) percent or more of the Park, then such appointment(s) shall be made by majority vote as aforesaid. So long as the Developer owns fifty (50%) percent or more of the Property it shall be entitled to appoint two of the three members of the Approval Committee.

B. Allowable Land Use: Advance approval of the improvements described in this paragraph is deemed necessary to protect and preserve the desirability and properties of Progress Park. Therefore, no construction, erection, relocation or exterior alteration of any buildings, structures, signs, parking areas, loading areas, landscaping or other facilities may be commenced and completed on any part of the Property without securing in advance the written consent and approval of the Approval Committee. The following information, as appropriate, shall be submitted to the Approval Committee for its consideration of any plans

- (1) Preliminary architectural plans for any proposed building, structure or improvement.
- (2) A Site plan showing location and design of buildings, structures, signs, drainage, driveways, driveway intersections with streets, exterior materials storage areas, parking areas, loading areas and sidewalks.
- (3) A grading plan and a planting plan, including screening walls, retaining walls and fences, if any, for analysis of adequacy of visual screening, erosion control and landscaping.
- (4) A description of proposed operations on the Property, an estimate of the maximum number of employees contemplated and a plan showing locations of utilities and easements therefore, if any.
- (5) Any other pertinent information requested by any member of the Approval Committee and any information to show compliance with each and all of these Covenants.

Approval or disapproval of such operational plans and specifications, site plans and architectural plans (hereinafter collectively called "Plans") shall be based upon the effect of such operations or uses on other property subject to these Covenants or upon the occupants thereof. If Developer fails either to approve or to disapprove such Plans within (60) days after the same have been submitted to it, it shall be conclusively presumed that Developer has disapproved said Plans.

Any Expenses incurred by the Developer in the review of Plans shall be reimbursed by the applicant. Such expense shall be reasonable and documented upon request of the applicant.

Neither Developer nor its successors or assigns shall be liable in damages to anyone who has submitted Plans to them for approval, or to any Owner or lessee of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such Plans. Every Person who submits Plans to Developer for approval agrees by submission of same, and every Owner and lessee of any of the Property, agrees by acquiring title thereto or interest therein, that he will not bring any action or suit against Developer, to recover any such damages and that he will indemnify Developer against any such actions brought by third parties against Developer seeking damages for its mistakes in judgment, negligence or nonfeasance arising out of or in connection with approval or disapproval or failure to approve any such Plans. Such agreement shall extend to Developer's successors and assigns.

C. Prohibitions on land use:

(1) No part of the Property or any building or structure placed on the Property shall be used for any purpose or in such a manner which shall be a nuisance, as determined by the Approval Committee, to the occupants or owners of any other adjoining real estate by the reason on emission from the Property, buildings and structures or the creation thereon or therein of odors, gases, dust, smoke, noise, fumes, cinders, soot, vibrations, glare, radiation, radioactivity, waste materials or any other means or substances.

(2) No materials, inventory, work in process, semi-manufactured items, finished products, plant equipment, parts, rubbish, waste materials, or other personal property shall be kept, stored, maintained or accumulated on any part of the Property outside of buildings erected thereon, except where prior written approval of the Approval Committee is secured after the placement of adequate screen planting and/or fencing, fencing and compliance with setbacks and any other conditions required therefore by the Approval Committee.

III. SPACE ALLOCATIONS AND DIMENSIONAL STANDARDS

A. BUILDING-TO-LAND RATIO: The ratio of building and structure coverage to the Site area will be subject to the approval of the Approval Committee if such ratio exceeds fifty (50%) percent.

B. Setbacks: Except as provided in Section III. C. below, no structure or improvement of any kind, and no part thereof, shall be placed on any Site closer to a property line than the setback distances as follows:

(1) **Front Yard:** The setback lines are thirty-five (35) feet from the front property line on any public street.

(2) **Side Yard:** The setback line is fifteen (15) feet from a side interior property line.

(3) **Rear Yard:** The setback line is twenty-five (25) feet from a rear property line.

C. Exceptions to Setback Limitations:

- (1) Roof overhang, subject to the specific approval of the Approval Committee in writing.
- (2) The improvements on Cluster Sites, may be constructed without regard to setbacks from the interior property lines of the improvements within the cluster, subject to the approval of the Approval Committee; provided, however, that the front, rear and side setback lines, as set forth above, for the Cluster Site, as seen as a single entity containing all improvements in the cluster, must be observed.
- (3) Steps, walks and access drives from the street to the improvements.
- (4) Paving and associated curbing.
- (5) Landscaping as governed by Section IV herein.
- (6) Planters not exceeding three (3) feet in height.

D. Off-Street Parking Areas:

- (1) No parking will be permitted on the streets. Each Site Owner shall provide adequate off-street parking to accommodate all parking needs for employees, visitors and company vehicles on the Site. If parking requirements increase as a result of a change in use or number of employees, additional off-street parking shall be provided by owner to satisfy the intent of this section. All parking facilities and private driveways must be in accordance with Section IV hereof. As a minimum, parking requirements of Part 12 of the Borough of Chambersburg Zoning Ordinance must be met.
- (2) Parking shall not be permitted between public street pavement and property line (street right-of-way line).
- (3) Parking shall be permitted between the improvements and the street right-of-way line, subject to Section III. C. (4), when properly shielded by landscaping and berming.

E. Off-Street Loading Areas: As a minimum, Section 1206 of the Borough of Chambersburg Zoning Ordinances shall be followed. In addition:

- (1) Loading areas shall not encroach into setback areas unless specifically approved by the Approval Committee.

IV.

ARCHITECTURAL AND AESTHETIC STANDARDS

A. Landscaping and Limitations on Cutting Natural Growth:

(1) Every Site on which a building shall have been placed shall be landscaped according to Plans approved as specified herein and maintained thereafter in a sightly and well kept condition. Developer, at its expense, will install landscape screening on lot lines and install street trees. Ownership and maintenance will transfer to property owner(s) after initial installation has been completed.

(2) The Site Owner, lessee or occupant shall landscape and maintain unpaved areas between streets and the improvements. There shall be a minimum of ten feet in width in grass in the front yard and a minimum of five feet in grass around all other property lines.

(3) Landscaping as approved by the Approval committee shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, or as soon as weather will allow.

(4) The Owner, lessee or occupant of any Site shall at all times keep the landscaping in good order and condition. Should the Owner, lessee or occupant of any Site fail to remedy any deficiency in the maintenance of the landscaping within twenty (20) days after written notification, Developer hereby expressly reserves the right, privilege and license to make any and all corrections or improvements in landscape maintenance at the expense of the Site Owner.

B. Exterior Construction, Permitted Materials, Prohibited Materials, Approved Construction Methods, Design:

(1) One exterior wall facing public streets must be finished on the exterior with the following: (a) architectural masonry units (excluding plain concrete block and cinder block); (b) natural stone; (c) glass materials; (d) precast concrete with prior approval by the Approval Committee; (e) metal siding in combination with one or more of the above with prior approval by the Approval committee, or; (f) as approved by the Approval committee, materials equivalent to those set forth above.

(2) Temporary Improvements: No temporary buildings or other improvements of a temporary nature, including trailers, incomplete buildings, tents or shacks shall be permitted on the Property. Temporary improvements used solely in connection with the construction or sales of permanent approved improvements may be permitted provided they are located as inconspicuously as possible and are removed immediately after completion of such construction.

(3) Paving: Driveways, Parking and Loading areas must be paved.

C. Signs: Plans and specifications for the construction, installation or alterations of all outdoor signs including traffic or directional signs shall be first submitted to and have the written approval of the Approval Committee. Signs should be located on the building, except directional signs as approved by the Approval Committee. If owner desires to locate a sign on the property, the Developer has written guidelines that must be followed.

(1) Must be set back a minimum of 15 feet from property line.

(2) Sign and structure cannot exceed!
Sign face cannot exceed 16 square feet
Height 5 feet, Width 7 feet

(3) Signs cannot be back lit.

D. Outdoor Storage:

(1) Unless specifically approved by the Approval Committee in writing, no materials, supplies or equipment including but not limited to trash and garage receptacles, shall be stored outside of the building setback lines. The Approval Committee can require landscaping to screen storage areas

(2) Storage Tanks: No storage tanks, including but not limited to, those used for storage of water or propane gas or other fuel or chemical, shall be permitted on the Property unless approved by the Approval Committee in writing.

(3) No trailer shall be used for storage purposes on any Site.

E. Maintenance Requirements, Refuse Collection and Prohibition of Junk Storage:

(1) Each Site Owner, lessee or occupant shall at all times keep his premises, buildings, improvements and appurtenances in a safe, clean, neat and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each Site Owner shall provide for the prompt removal of trash and rubbish from his premises. The Sites shall not be used for storage of any scrap materials without the approval of the Approval Committee.

(2) During construction, it shall be the responsibility of each Site Owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner.

F. Utilities Placement and Design: Without limiting the generality of any of the foregoing, the following use restrictions shall be maintained and enforced with respect to the Property:

(1) Antennas: No antenna for transmission or reception of television signals or any other form of electro-magnetic radiation shall be erected, used or maintained on the Property outside any building, whether attached to an improvement or otherwise, without the prior approval of the Approval Committee.

(2) Utility Services: No lines, wires or other devices for the communication of transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cable constructed, placed and maintained underground or concealed in, under or on buildings or other approved improvements, provided electrical transformers may be permitted if properly screened and approved by the Approval Committee. Nothing herein shall be deemed to forbid the erection and use of temporary electric or telephone services incident to the construction of approved improvements.

(3) Mailboxes: Mail or other delivery boxes shall be permitted on the Property as approved by the Approval Committee.

(4) Mechanical Equipment: All mechanical equipment, including roof mounted, shall be enclosed or screened so as to be an integral part of the architectural design.

G. Repair of Building: No building or other improvements shall be permitted to fall into disrepair and each improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

V. IMPLEMENTATION

A. Enforcement: These covenants and restrictions may be enforced by the Developer or its successor(s) or by any Owner of a Site in the Park in a law or equity action for damages or specific performance. Developer may, but is not obligated to, in any instance where an Owner is clearly in violation and has been warned in advance of such, summarily enter upon the Site which such violation or breach exists and to abate and remove any structure or correct any condition that may constitute such violation or breach at the expense of the then Owner, which expense shall be a lien on such Site provided, however, that no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after delivery of written notice of such violation or breach from the Developer or its said successors or assignees of the Site on which the violation or breach has occurred or in the alternative within thirty (30) days after mailing such notice by certified mail, postage prepaid, to the record Owner of such Site at his or its last known address.

In any legal or equitable proceeding for the enforcement or to restrain a violation of this Declaration or any provision hereof, the party instituting the action for enforcement shall be entitled to an award of its attorney's fees in such amount as may be fixed by the Court in such proceeding, but only if such party is also the prevailing party in whole or in part. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

B. Governmental Compliance: Construction and alteration of all improvements shall be performed in accordance and comply with the requirements of all applicable governmental authorities.

C. Repurchase Rights:

(1) If any Owner shall not have completed construction of its intended facility on a Site within two (2) years of the date of conveyance to the Owner, Developer shall have the option to purchase the Site for the original purchase price to the Developer.

(2) If any Owner shall have commenced construction of its intended facility upon a Site, but has not substantially completed it and is not conducting its business operations there within two (2) years of the date of conveyance to the Owner, the Developer shall have the option to repurchase the Site with improvements for the fair market price as determined by an independent experienced industrial/commercial appraiser selected and paid for by Developer. The price established by such appraisal shall presumptively be the fair market value to be paid for the Site.

(3) The option must be exercised within ninety (90) days after the expiration of the two year period and settlement shall be fixed as to fall within sixty (60) days after the exercise.

Anything in this Subparagraph C to the contrary notwithstanding, the Developer, its successors and assigns may, but is not required to, extend in its sole discretion and only in writing, the time in which such construction must be completed by Owner upon Developer's receipt of a request for extension by Owner upon Owner's demonstration of its diligence in pursuing completion of said construction. Developer may proceed by action of specific performance if owner refuses to honor the exercise of this option.

D. Constructive Notice and Acceptance: Every person who now or hereafter owns 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 Condition, Standard and Covenant contained in the instrument by which such person acquired an interest in said Property.

E. Completion of Construction/Temporary Structures: After commencement of construction of any structure, the Site Owner shall diligently prosecute the work thereon, to the end that the structure shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof.

VI. MISCELLANEOUS

A. Failure to Enforce Not a Waiver of Rights: Any waiver or failure to enforce any provision of these Covenants in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location in the Commercial center or of any other provision of these Covenants. The failure of Developer or any Site Owner to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of any right to enforce any other Covenant.

B. Rights of Mortgagees: All Covenants and other provisions herein contained shall be deemed subject and subordinate to all mortgages, charges (liens) and deeds of trust now or hereafter executed upon land subject to these restrictions, and none of said Covenants shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust, provided, however, that any purchaser at foreclosure sale, and his successors and assigns, shall hold any and all of the Property so purchased subject to all of the Covenants and other provisions of this Declaration.

C. Mutuality, Reciprocity/Runs with Land: All Covenants, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel in favor of every other parcel; shall create reciprocal rights and obligations among the respective owners of all parcels and privity of contract and estate among all grantees of said parcels, their heirs, successors and assigns; and, as to the Owner of each Site, his heirs, successors and assigns, shall operate as Covenants running with the land for the benefit of all other Sites. The Developer reserves the right, however, from time to time hereafter to delineate, plot, grant, or reserve within the remainder of the Park such public streets, roads, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of the Park (and from time to time to change the location of the same) free and clear of these restrictions and Covenants and to dedicate the same to the public use or to grant the same to the Borough of Chambersburg and/or to appropriate public utility corporations.

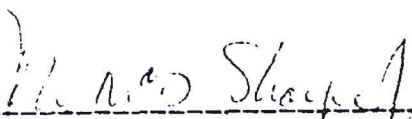
D. Paragraph Headings: Paragraph headings, where used herein, are inserted for convenience only and are not intended to be part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

E. 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.

IN WITNESS WHEREOF, Chambersburg Area Development Corporation has executed this Declaration of Protective Covenants the day and year first written above.

Attest:

CHAMBERSBURG AREA
DEVELOPMENT CORPORATION



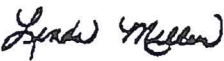
Secretary John McD. Sharpe, Jr.

By 

President Allen E. (Skip) Jennings, Jr.

I hereby CERTIFY that this document is recorded in the Recorder's Office of Franklin County, Pennsylvania.




Linda Miller
Recorder of Deeds

LINDA MILLER
RECORDER OF DEEDS
FRANKLIN COUNTY

AUG 25 11 49 AM '98

29.50

RECORDED

STATE OF PENNSYLVANIA :
: SS
COUNTY OF FRANKLIN :

On this, the 21st day of August, 1998,
before me, a Notary Public, the undersigned officer,
personally appeared Allan E. Jennings, Jr. who acknowledged
himself to be President of Chambersburg Area Development
Corporation, and that he as such, being authorized to do so,
executed the foregoing Declaration of Protective Covenants
for the purposes therein contained by signing the name of
the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal.

Charlene O Graham
Notary Public

