

**Mount Pocono Borough Council
Work Session Agenda
Borough Council Chambers
Tuesday September 19, 2023**

Call To Order

Pledge of Allegiance

Roll Call:

_____ Norman DeLano, _____ Debra Fulton, _____ Ann Marie Harris, _____ Ella Santiago,
_____ Donald Struckle, _____ Claudette Williams, _____ Mayor Altemose

Public Comment (agenda items only)

LERTA Proposal

CP MT. Pocono Proposal to Change Emergency Access

Brodhead Water Association Request for Membership

Powell's Quote for Utility Truck Light Kit Installation

Medico Quote for Repairs

American Water Services Application for Oak Street Park

Security Release for POSH

Creation of Borough Facebook Page

Inactive Account-Peoples Security Pocono Summit Stormwater Escrow \$10,011.79

Dog Park Sidewalk Installation Estimate

Consider Purchase of 1406 Pocono Blvd for Downtown Pocket Park

Committee Chair Reports:

Budget and Finance – Don Struckle

Economic Development – Ann Marie Harris

COG – Donald Struckle

EMS – Norman DeLano

Grants – Marissa Duffy

Newsletter – Norman DeLano

Parks and Recreation – Debra Fulton

Personnel – Claudette Williams

Public Infrastructure and Utilities – Randy Altemose

Regional Police – Randy Altemose

Safety Commission – Ella Santiago

Public Comment

Adjournment

MEMORANDUM

TO: J. Fareri
FROM: G. Asimos
DATE: April 7, 2023
RE: LERTA PROCESS OUTLINES

OVERVIEW

The LERTA allows, but does not require, the three governments that impose real estate taxes, to abate taxes for up to 10 years, for properties in areas that are designated as “deteriorated”. The abatement reduces the assessed value (and therefore the real estate tax paid) on the value of improvements made to the property (not land). The abatement begins the tax year after the certificate of occupancy is issued.

Subjects covered:

- Statute
- Deteriorated Areas
- Borough
- County
- School District
- Selected Cases
- Suggested Procedure

STATUTE

The relevant statute is named the Local Economic Revitalization Tax Assistance Act (hence LERTA) and is found at 72 P.S. §§4722-4727.

The purpose of LERTA is “to authorize local taxing authorities to exempt new construction in deteriorated areas of economically depressed communities and improvements to certain deteriorated industrial, commercial and other business property . . .” 72. P.S. §4723

Procedure, according to 72 P.S. §§4725, 4727

- Each local taxing authority may by ordinance or resolution exempt from real property taxation the assessed valuation of improvements to deteriorated properties and the assessed valuation of new construction within the respective municipal governing bodies designated deteriorated areas of economically depressed communities in the amounts and in accordance with the provisions and limitations hereinafter set forth.

- Prior to the adoption of the ordinance or resolution authorizing the granting of tax exemptions, the municipal governing body shall affix the boundaries of a deteriorated area or areas, wholly or partially located within its jurisdiction, if any.
- At least one public hearing shall be held by the municipal governing body for the purpose of determining said boundaries.
- At the public hearing the local taxing authorities, planning commission or redevelopment authority and other public and private agencies and individuals, knowledgeable and interested in the improvement of deteriorated areas, shall present their recommendations concerning the location of boundaries of a deteriorated area or areas for the guidance of the municipal governing bodies, such recommendations taking into account the criteria set forth in the act of May 24, 1945 (P.L. 991, No. 385),¹ known as the "Urban Redevelopment Law," for the determination of "blighted areas," and the criteria set forth in the act of November 29, 1967 (P.L. 636, No. 292),² known as the "Neighborhood Assistance Act," for the determination of "impoverished areas," and the following criteria: unsafe, unsanitary and overcrowded buildings; vacant, overgrown and unsightly lots of ground; a disproportionate number of tax delinquent properties, excessive land coverage, defective design or arrangement of buildings, street or lot layouts; economically and socially undesirable land uses.
- Adjoining land may be included in accordance with 72 P.S. §4725.
- The ordinance or resolution must specify a description of each such area as determined by the municipal governing body, as well as the cost of improvements per unit to be exempted, and the schedule of taxes exempted as hereinafter provided.
- The local taxing authorities may by implementing ordinance or resolution agree to adopt tax exemptions contingent upon the similar adoption by an adjacent local taxing authority or by a local taxing authority with mutual jurisdiction, within the limitations provided in the statute.
- Any person desiring tax exemption pursuant to ordinances or resolutions adopted pursuant to this act, shall notify each local taxing authority granting such exemption [1] in writing [2] on a form provided by it [3] submitted at the time he secures the building permit, or if no building permit or other notification of new construction or improvement is required, at the time he commences construction. 72 P.S. §4727
- copy of the exemption request shall be forwarded to the board of assessment and revision of taxes or other appropriate assessment agency. 72 P.S. §4727
- after completion of the new construction or improvement, the assessment board assesses separately the new construction or improvement (i.e., not the land value component of the assessment) and calculates the amounts of the assessment eligible for tax exemption in accordance with the limits established by the local taxing authorities and notifies the taxpayer and the local taxing authorities of the reassessment and amounts of the assessment eligible for exemption
- "the LERTA statute itself creates no right to a hearing and adjudication for a Taxpayer before a taxing body where that taxing body [in this case a school district] has not adopted a LERTA designation." *Jennison Fam. Ltd. P'ship v. Montour Sch. Dist.*, 802

A.2d 1257, 1264 (Pa.Cmwlth. 2002) (school district superintendent and solicitor conferred and denied the application without a hearing)

Exemption Schedule, according to 72 P.S. §4726

- tax exemption may be based on the assessment attributable to the actual cost of new construction or improvements OR up to any maximum cost uniformly established by the municipal governing body
- in addition, the actual amount of taxes exempted must be in accordance with a schedule established by the local taxing authority (school district, county or municipality), with the following guidelines: exemption may not exceed ten years; the schedule must stipulate the portion of new construction or improvements to be exempted each year; and the exemption from taxes shall be limited to the additional assessment valuation attributable to the actual costs of new construction or improvements to deteriorated property or not in excess of the maximum cost per unit established by a municipal governing body.
- The exemption is on the property (not the owner) and so the exemption does not terminate upon the sale or exchange of the property.

DETERIORATED AREA

From 72 P.S. §4725:

- unsafe, unsanitary and overcrowded buildings;
- vacant, overgrown and unsightly lots of ground;
- a disproportionate number of tax delinquent properties, excessive land coverage, defective design or arrangement of buildings, street or lot layouts;
- economically and socially undesirable land uses.

From Urban Redevelopment Law 35 P.S. §1701 et seq:

35 P.S. §1712.1

(c) Blighted property shall include:

(1) Any premises which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the local housing, building, plumbing, fire and related codes.

(2) Any premises which because of physical condition, use or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures.

(3) Any dwelling which because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, has been designated by the department responsible for enforcement of the code as unfit for human habitation.

(4) Any structure which is a fire hazard, or is otherwise dangerous to the safety of persons or property.

(5) Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.

(6) Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.

(7) Any unoccupied property which has been tax delinquent for a period of two years prior to the effective date of this act, and those in the future having a two year tax delinquency.

(8) Any property which is vacant but not tax delinquent, which has not been rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.

(9) Any abandoned property. A property shall be considered abandoned if:

(i) it is a vacant or unimproved lot or parcel of ground on which a municipal lien for the cost of demolition of any structure located on the property remains unpaid for a period of six months;

(ii) it is a vacant property or vacant or unimproved lot or parcel of ground on which the total of municipal liens on the property for tax or any other type of claim of the municipality are in excess of 150% of the fair market value of the property as established by the Board of Revisions of Taxes or other body with legal authority to determine the taxable value of the property; or

(iii) the property has been declared abandoned by the owner, including an estate that is in possession of the property.

From the Neighborhood Assistance Act,"

This law has been repealed.

Mt. Pocono Borough Ordinance

I could not find a reference to LERTA nor to any establishment of a deteriorated or blighted area in the Borough Codes online.

Monroe County Ordinance

Their ordinances are not available online, so we will need to reach out to their Solicitor's office or the Commissioners' office. They could have an ordinance, a record of past exemptions and an application form.

Some Cases Useful to Know

MacDonald, Illig, Jones & Britton v. Erie County Board of Assessment Appeals, 604 A.2d 306 (Pa.Cmwth. 1992) (tax exemption begins in year after completion of construction or improvement, rather than the year after issuance of a building permit, when the assessed value does not yet reflect the value of the completed construction or improvement)

Northwood Nursing Care and Convalescent Home, Inc. v. City of Philadelphia Board of Revision of Taxes, 511 A.2d 281 (Pa.Cmwth. 1986) (LERTA requires that the request for exemption be applied for at the time a building permit is issued; and a city ordinance stating this has occurred if application is made within 60 days after a building permit is issued is an allowable procedure under the Act)

Academy Plaza Associates, Ltd. V. Board of Revision of Taxes, City of Philadelphia, 502 A.2d 1101 (Pa.Cmwth. 1986) (court declined to allow owner to file application for exemption eight months after a building permit was issued; so exemption was not available)

Choe v. Philadelphia Board of Revision of Taxes, 251 A.3d 858 (Pa.Cmwth. 2021) (10 year exemption expired at 10th year after developer completed condominium building, not 10 years after unit owners purchasers their units; City began exemption in the tax year immediately following last temporary Certificate of Occupancy)

Jennison Family Limited Partnership v. Montour School District, 802 A.2d 1257 (Pa.Cmwth. 2002) (the School District discretion as to whether to exempt a taxpayer's improvement from taxation in a LERTA designated area; the court also addressed uniformity of decisionmaking by the school district; and the decision was made "by the superintendent and solicitor who denied the application without a hearing; there is no reference to the application being made with a building permit)

SUGGESTED PROCEDURE:

1. Define proposed area to be designated as a "deteriorated area"
2. Establish "schedule" up to a maximum of 10 years of exemption, e.g., 10 years declining at 100%, 90%, 80%, etc. or 5 years declining at 100%, 80%, 60%, etc.
3. Possible review of proposal, ordinances, application by County Planning Commission
4. Municipal governing body (Mt. Pocono Borough Council) holds hearing on the subject of determining the boundary of deteriorated areas. 72 P.S. §4725
5. Governing body establishes the boundaries of the deteriorated area, presumably by ordinance though the statute does not specify this. 72 P.S. §4725
6. Each taxing authority (School District, County, municipality) adopts ordinance or resolution granting the tax exemptions for the designated deteriorated area. 72 P.S. §4725
7. Notify each local taxing authority in writing – on a form provided by the taxing authority – at the time the building permit is "secured". The exemption from taxes authorized by this act shall be upon the property exempted and shall not terminate upon the sale or exchange of the property.

8. A copy of the exemption request is forwarded to the board of assessment appeals (a County office in Monroe)
9. Taxing authorities then decide whether or not to grant the application, presumably based on their ordinances

MOUNT POCONO BOROUGH

MONROE COUNTY, PENNSYLVANIA

ORDINANCE NO. _____

AN ORDINANCE ENACTED PURSUANT TO THE LOCAL ECONOMIC REVITALIZATION TAX ASSISTANCE LAW (LERTA), AUTHORIZING TAX EXEMPTIONS FROM PROPERTY TAX FOR CERTAIN DETERIORATED INDUSTRIAL, COMMERCIAL OR OTHER BUSINESS PROPERTY; DEFINING ELIGIBLE DETERIORATED AREAS; SETTING A MAXIMUM EXEMPTION AMOUNT AND AN EXEMPTION SCHEDULE; AND PROVIDING A PROCEDURE FOR SECURING AN EXEMPTION.

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania passed Act 76 of 1977 (72 P.S. § 4722, et seq.), known as the Local Economic Revitalization Tax Assistance Law ("LERTA" or the "Act") which authorized local taxing authorities to provide for tax exemption for certain deteriorated industrial, commercial and other business property; and

WHEREAS, the Council of Mount Pocono Borough (the "Council"), in accordance with said Act, held a public hearing on _____, 2023 to determine the boundaries of said deteriorated area which shall be identified as the "Deteriorated Area"; and

WHEREAS, the Council, at the conclusion of the public hearing, enacted Resolution No. _____ which identified the Deteriorated Area located within Mount Pocono Borough which are eligible for tax exemption pursuant to this Ordinance; and

WHEREAS, the Council now wishes to establish and adopt an ordinance to establish a tax exemption for the Deteriorated Area pursuant to LERTA for a period of ten years as described herein.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Council as follows:

SECTION 1. DEFINITIONS. As used in this Ordinance, the following words and phrases shall have the meaning set forth below:

- A. "Deteriorated Property" means any industrial, commercial or other business property owned by an individual, association or corporation, and located in a "Deteriorated Area", as provided by Resolution of the Council or any such property which has been the subject of an order by the Council or other governmental agency requiring the unit to be vacated, condemned or demolished by reason of non-compliance with laws, ordinances or regulations.

- B. "Improvement(s)" means repair, construction or reconstruction, including alterations or additions, having the effect of rehabilitating a deteriorated property so that it becomes habitable or attains higher standards of safety, health, economic use or amenity or is brought into compliance with laws, ordinances or regulations governing such standards. Ordinary upkeep and maintenance shall not be deemed an improvement.
- C. "Local Governing Body" means the Council of Mount Pocono Borough.

SECTION 2. EXEMPTION.

- A. The exemption from real property taxes shall be limited:
 - (1) To the exemption schedule as established within this Ordinance.
 - (2) To that portion of the additional assessment attributable to the actual cost of Improvements to the Deteriorated Property.
 - (3) To the assessment valuation attributable to the cost of construction of a new industrial, commercial or other business unit.
- B. In all cases, the exemption from taxes shall be limited to that portion of the additional assessment attributable to the Improvement and for which a separate assessment has been made by the Monroe County Board of Assessment and for which an exemption has been separately requested.
- C. No tax exemption shall be granted if the property owner does not secure the necessary and proper permits prior to improving the property.
- D. No tax exemption shall be granted if the property owner is delinquent in the payment of real estate taxes at the time of application for tax exemption.
- E. In any case, after the effective date of this Ordinance, when Deteriorated Property is damaged, destroyed or demolished, by any cause or for any reason, and the assessed valuation of the property affected has been reduced as a result of said damage, destruction or demolition, the exemption from real property taxation authorized by this Ordinance shall be limited to that portion of new assessment attributable to the actual cost of Improvements that is in excess of the original assessments that existed prior to damage, destruction or demolition of the property.
- F. Any exemption permissible under this Ordinance shall not be applied to any residential home, apartment buildings or other living establishments, except hotels and motels which rent rooms to travelers on a short-term basis.

SECTION 3. EXEMPTION AREA. The Council enacted Resolution No. _____ on _____, 2023 which identified the boundaries of the Deteriorated Area. A copy of Resolution No. _____ is attached hereto as Exhibit "A". Subject to the limitations set forth in this Ordinance, all commercial, industrial or local business properties located in the Deteriorated Area may be eligible to participate in the tax exemption program established in this Ordinance.

SECTION 4. EXEMPTION SCHEDULE.

- A. The schedule of real estate taxes to be exempted shall be in accordance with the following percentage of Improvements to be exempted each year.

<u>YEAR</u>	<u>PORTION TO BE EXEMPT</u>
First Year	90%
Second Year	80%
Third Year	70%
Fourth Year	60%
Fifth Year	50%
Sixth Year	40%
Seventh Year	30%
Eighth Year	20%
Ninth Year	10%
Tenth Year	0%

- B. The exemption from taxes granted under this Ordinance shall be upon the property, and shall not terminate upon the sale or exchange of the property.
- C. If an eligible property is granted tax exemption pursuant to this Ordinance, the Improvement shall not, during the exemption period, be considered a factor in assessing other properties.
- D. After the 9th year, the exemption shall terminate.

SECTION 5. NOTICE TO TAXPAYERS.

- A. There shall be placed on the form application for a building permit the following notation:

Under the provisions of Ordinance No. _____, you may be entitled to a property tax exemption on your contemplated alteration or new construction. An application for exemption may be secured from the Code Enforcement Office and must be filed with the Township at the time a building permit is secured.

- B. At the time a building permit is secured for the construction of an Improvement for which an exemption is requested, the taxpayer shall apply to the Borough Council for the exemption provided for in this Ordinance. A request for the exemption must be in writing and include the following information:

- (1) The date the building permit was issued for the Improvements.
- (2) The type of Improvement.
- (3) The summary of the plan of the Improvement.
- (4) The cost of the Improvement.
- (5) Any or all such additional information required.

SECTION 6. PROCEDURE FOR OBTAINING EXEMPTION. A copy of the written request for exemption shall be forwarded to the Monroe County Assessment Office by the Borough. Upon completion of the Improvement, the taxpayer shall notify the Council so that the Council may have the Assessor assess the Improvements separately for the purpose of calculating the amount of assessment eligible for tax exemption in accordance with the limits established in this Ordinance. The Borough will then obtain from the Assessor the amount of the assessment eligible for exemption, and will notify the taxpayer. Appeals from the reassessment and the amount eligible for the exemption may be taken by the taxpayer or by the Borough as provided by law.

SECTION 7. TERMINATION. Unless otherwise repealed by the Council of Commissioners, this Ordinance shall terminate five (5) years from the effective date hereof. Nothing contained herein shall act to prohibit the Council of Commissioners from enacting a similar Ordinance, or extending this one. Any property tax exemptions granted under the

provisions of this Ordinance shall be permitted to continue according to the exemption schedule even if this Ordinance expires or is repealed.

SECTION 8. SEVERABILITY. The provisions of this Ordinance are severable, and if any of its sections, clauses or sentences shall be held illegal, invalid or unconstitutional, such provisions shall not affect or impair any of the remaining sections, clauses or sentences.

SECTION 9. REPEALER. All ordinances or parts of ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 10. EFFECTIVE DATE. This Ordinance shall become effective immediately upon adoption.

ENACTED AND ORDAINED THIS _____ DAY OF _____, 2023.

ATTEST:

MOUNT POCONO BOROUGH, BY ITS
COUNCIL

, Secretary

Randy Altemose, Mayor

Don Struckle, President

Lori Noonan, Vice President

Norman DeLano, Member

Debra Fulton, Member

Ann Marie Harris, Member

Ella Santiago, Member

FISCAL IMPACT AND LERTA ANALYSIS
Proposed Mount Pocono Crossing Warehouse
Mount Pocono Borough, Monroe County

March 20, 2023

Prepared for:
Newland Capital Group

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Fiscal Impact and LERTA Analysis
Proposed Mount Pocono Crossing Warehouse
Mount Pocono Borough, Monroe County
 March 20, 2023

This report examines the annual fiscal impact to Mount Pocono Borough and the Pocono Mountain School District (PMSD) of the Mount Pocono Crossing Warehouse proposed by Newland Capital Group. The report examines the fiscal impact to the Borough and School District during any given year after the completion of the proposed project and full occupancy, based on 2023 levels of revenue, expenditures, and taxation. The report also examines the fiscal impact to the Borough and School District under a ten year LERTA program.

The proposed development is a 1,204,494 square foot warehouse and associated truck bays, truck parking, employee parking, utilities, stormwater management, etc. At buildout and full occupancy, the proposed development is projected to generate \$69,603,423 in assessed value and have 550 workers.

The table below shows the annual net fiscal impact (revenue minus expenditures) to the Borough and School District of the proposed development. Below the table are sections on assessments, demographics, Borough expenditures and revenue, and School District expenditures and revenue. At the end of this report are the spreadsheets for the Borough and School District impact, which show the major expenditure and revenue categories for each entity, and the LERTA schedule. All cell addresses in the text refer to these spreadsheets.

Proposed Use	Number of Square Feet	Annual Net Borough Impact	Annual Net School District Impact	Annual Net Combined Impact	Annual Net Combined Impact per 1,000 SF
Warehouse	1,204,494	\$433,432	\$1,427,392	\$1,860,825	\$1,545

The annual net fiscal impact of the proposed project is projected to be highly favorable for the Borough and School District, creating annual surpluses for each entity. **The annual net combined fiscal impact for the proposed development is projected to total positive (or surplus) \$1,860,825 or \$1,545 per 1,000 square feet.** The annual combined revenue is projected to exceed the annual combined expenditures by 2,911.2 percent.

There are two important reasons for the positive annual net fiscal impacts projected here:

- First, the proposed development is projected to have a very high assessed value, which results in considerable real estate tax revenue to the Borough and School District.
- Second, the proposed development is projected to generate very low expenditures to the Borough and no expenditures at all to the School District.

The combination of high revenue and low (or not) expenditures results in annual surpluses for each entity. The Borough and School District can use this annual revenue, including the annual surpluses, for reducing outstanding debt, lowering the Borough or School District real estate tax rate, increase operating expenditures by adding staff (such as police officers, teachers, or public works personnel), or pursuing capital expenditures (such as new police vehicles, fire fighting apparatus, recreation facilities, school facilities, or stormwater management upgrades).

Please note that these projected annual surpluses to the Borough and School District do not include the following substantial benefits:

1. Approximately \$598,000 in Borough recreation impact fees, to be collected at the time of development.
2. Approximately \$575,235 in real estate transfer tax revenue to each of the Borough and School District upon the sale of the proposed development in any year after buildout.
3. Approximately \$636,000 worth of road improvements for the loop road to be paid by the applicant, plus additional State funding leveraged by the applicant's expenditures for the loop road.
4. \$365,741 for loop road intersection improvements at Route 611.
5. The offer of dedication of approximately 3.2 acres for the loop road, at no charge to the Borough or PennDOT.
6. Building permit and other permit fees.

LERTA

The Borough of Mount Pocono, Pocono Mountain School District, and Monroe County participate in the Local Economic Revitalization Tax Assistance program (or LERTA), and the Mount Pocono Crossing project is being proposed as a LERTA project. Under a typical LERTA schedule, one hundred percent of the assessed value of the improvements is exempted from property taxes in the first year of the ten year program, and the exemption decreases by 10 percent with each additional year, such that the assessed value of the improvements is fully taxed in the eleventh year. However, in order to prevent the Borough from experiencing a net deficit during the first year of the LERTA program, the applicant proposes to exempt only 90 percent of the assessed value of the improvements in that year. The Borough and School District continue to receive the real estate tax revenue from the property's existing assessed value of \$1,159,940 throughout the duration of the LERTA program.

The spreadsheet at the end of this report shows the impact of the LERTA program on the annual net revenue to the Borough and School District from the proposed development. It assumes that all elements of the proposed development are completed in Year 1 of the LERTA program. For each year (1 through 10 and beyond), the spreadsheet shows the following:

- Percentage of Borough and School District real estate tax to be applied to the proposed improvements, which is 10 percent in Year 1 increasing in 10 percent increments to 100 percent in Year 10 and beyond.
- Borough Revenue, which includes the percentage of Borough real estate tax revenue for that year, plus 100 percent of all other revenue sources (earned income tax, local services taxes, miscellaneous and liquid fuels revenue, and real estate tax revenue from the assessment of the underlying land).
- School District revenue, which includes the percentage of District real estate tax revenue for that year, plus the real estate tax revenue from the assessment of the underlying land.
- Borough expenditures, which remain a constant \$63,920 per year, and School District expenditures, which remain a constant \$0 per year.
- Net Borough and School District impact, which is the revenue minus the expenditures for that year for each entity.

The Borough net impact is projected to be a net surplus of \$33,480 in the first year of the LERTA schedule, increasing to an annual surplus of \$433,432 at the end of the LERTA period. The cumulative impact of the LERTA program to the Borough is projected to be a surplus of \$2,364,734 over ten years. The School District net impact is projected to remain a net surplus throughout the LERTA schedule, because the proposed development generates a considerable amount of annual real estate tax revenue (more than \$1.4 million) and there are no School District expenditures from the proposed nonresidential development. The cumulative impact of the LERTA program to the School District is projected to be a surplus of \$8,063,100 over ten years.

Assessments

The assessed value of the proposed development is determined using six comparable warehouses recently constructed in northwestern Monroe County. The table below shows similar properties with information from the Monroe County Board of Assessment database. All are large warehouses greater than 500,000 square feet, built since 2000. For each property, the table shows the owner, address, municipality, year built, building square feet, assessment, and assessment per square foot.

Owner	Address	Muni.	Built	SF	Assessment	Per SF
LPC Pocono I LP	145 Market Way	Coolbaugh	2020	690,000	\$32,213,300	\$46.69
Pool 3 Industrial PA LLC	141 Commercial Blvd	Tobyhanna	2019	1,003,800	\$46,624,100	\$46.45
Pool 3 Industrial PA LLC	PA 115	Tobyhanna	2019	510,410	\$25,024,360	\$49.03
Arcadia North Land LLC	PA 611	Coolbaugh	2018	1,050,000	\$72,439,180	\$68.99
Thompson Logistics Assets LLC	2086 Corporate Cir.	Coolbaugh	2007	1,368,841	\$90,500,000	\$66.11
Walmart Distribution Center	276 Veterans Drive	Coolbaugh	2002	1,117,165	\$64,905,720	\$58.10
		TOTALS		5,740,216	\$331,706,660	\$57.79

The average assessed value for the 5,740,216 square feet of development in these six existing warehouses is \$57.79 per square foot (cell C6), which is applied to the number of square feet of proposed development in the Mount Pocono Crossing project (1,204,494, cell B6). The proposed development is projected to have an assessed value of \$69,603,423 (cell D6). This projected assessed value represents 25.7 percent of the total existing assessed value of all properties in Mount Pocono Borough (\$271,146,430, according to the Monroe County Assessment Office report as of March 2, 2023), and 1.0 percent of the total existing assessed value of all properties in the Pocono Mountain School District (\$6,741,619,621, according to the 2022-2023 PMSD Budget). Please note that the Monroe County Assessment Office will determine the actual assessment only when the proposed development is constructed and inspected.

Demographics

The number of workers in the proposed warehouse development is projected to total 550 (cell E6), and includes the following positions, shown in the table below with their respective average annual salaries. The source of the average annual salaries is the *Pennsylvania Metropolitan Area Employment and Wage Estimates*, prepared by the Bureau of Labor Statistics, U. S. Department of Labor, in May, 2021 (the most recent data available). The weighted average annual salary of all positions is projected to be \$45,601 (cell I18).

Position	% of Workers	Average Annual Salary
Transportation and Material Moving Workers	90%	\$40,670
First Line Supervisors of Transportation and Material Moving Workers	5%	\$59,680
Transportation, Storage and Distribution Managers	5%	\$120,280
TOTALS	100%	\$45,601

Please note that the figure of 550 represents the number of full time equivalent positions, not the total number of employees. The total number of employees is likely to be higher through turnover and part time workers.

Since the proposed development is entirely nonresidential in nature, it is projected to generate 0 public school students (cell F28 of the School District spreadsheet).

Annual Mount Pocono Borough Expenditures

The Mount Pocono Borough budget includes the following three operating funds, shown in the table below with their respective 2023 expenditure totals:

Fund	Budgeted Expenditure
General Fund	\$2,460,716
Road Rehab Fund	\$200,000
Liquid Fuels Fund	\$104,914
TOTAL 2023 EXPENDITURES	\$2,765,630

The three operating funds total \$2,765,630 in expenditures for 2023 (cell D18). These three funds cover nearly all Borough expenditures, including legislative body, administration, tax collection, legal services, treasurer, Borough building expenses, regional police, fire protection, ambulance and EMS service, planning and zoning, safety commission, highway maintenance (general, street cleaning, snow and ice removal, traffic signals and signs, repairs to tools and machinery, and highway reconstruction), culture and recreation, insurance, library, debt service, insurance, employee benefits, road paving, and other road expenses.

In order to find a more accurate measure of the average annual expenditures for the proposed development, four categories of funds are subtracted from the 2023 operating expenditures of \$2,765,630 (cell D18):

1. Pass-Through Funds. Pass-through funds are excluded because the proposed development will have no net impact on these funds, since revenue always equals expenditures. Most pass-through funds are state grants and subsidies, reimbursable expenses, and user fees. Pass-through funds that are excluded total \$234,114 and are shown in the table below with their respective sums in the Borough's 2023 budget.

Pass-Through Fund	Fund	Budgeted Amount
Recycling Grant - State	General Fund	\$17,000
Public Utility Realty (PURTA)	General Fund	\$1,500
Liquor Licenses	General Fund	\$1,000

Pass-Through Fund	Fund	Budgeted Amount
Firemen's Relief	General Fund	\$17,000
Borough Employees Pensions State Aid	General Fund	\$22,000
Legal Fees Reimbursable	General Fund	\$5,000
Engineering Fees Reimbursable	General Fund	\$50,000
Insurance Reimbursable	General Fund	\$1,000
Paradise Township Fire Insurance	General Fund	\$6,500
Rentals	General Fund	\$5,000
Ball Field Usage Fee	General Fund	\$200
Solid Waste Collection and Disposal Fee	General Fund	\$3,000
State Appropriation	Liquid Fuels Fund	\$104,914
	TOTAL	\$234,114

2. **Development Related Funds.** Another pass-through category is development related funds, totaling \$10,000 and shown in the table below with their respective 2023 expenditures (all in the General Fund).

Development Related Fund	Budgeted Amount
Application and Startup Fees	\$2,500
Building (Other General Permits)	\$1,500
Building Permits (New Construction)	\$1,000
Building Permits - UCC	\$5,000
Total	\$10,000
90% of Development Related Expenditures	\$9,000

Such expenditures are related to the processing and administration of proposed subdivisions and land developments in the Borough, and are excluded because they are in essence one-time pass-through funds for specific functions normally associated with new development. For example, the revenue from building permit fees will be expended on the building inspections and the administration of those permits while a development is under construction, not on other functions associated with the time after a development is completed. Once a development is completed, the revenue and expenditures for such permits and application fees decreases significantly, but not completely.

Ninety percent of the \$10,000 revenue for development related funds (or \$9,000) is excluded from the total expenditures. Only 90 percent of this revenue is excluded from the expenditure analysis, in acknowledgment that there will still be some expenditures on subdivisions and land developments once they are complete, for things like building renovations and inspections for violations. Please note that in the revenue analysis, below, only 10 percent of the revenue from development related funds (or \$1,000) is included in the category of miscellaneous revenue.

3. **Excluded Expenditures.** Certain expenditures are excluded from this analysis because they are unrelated to nonresidential development such as the proposed warehouse. Such excluded expenditures are shown in the table below with their respective 2023 expenditures (all in the General Fund).

Excluded Expenditures	Budgeted Amount
Culture and Recreation	\$19,800
Libraries	\$39,890
Total	\$59,690

The excluded expenditures total \$59,690.

4. Interfund Transfers. Certain interfund transfers are excluded because they are transfers to a balance reserve (and therefore are not budgeted to be expended in the current fiscal year) or to a capital fund, for capital (and not operating) expenditures. Interfund transfers total \$140,000, and are shown in the table below with their respective 2023 totals.

Source Fund	Destination Fund	Budgeted Amount
General Fund	Fund Balance Reserve	\$50,000
General Fund	Five Points Fund	\$40,000
General Fund	Capital Fund	\$50,000
Total		\$140,000

The excluded pass-through, development related funds, excluded funds and interfund transfers total \$442,804 (cell D19). The 2023 net Borough operating expenditures (minus pass-through funds, development related funds, excluded funds and interfund transfers) total \$2,322,826 (cell D20). Please note that just as the expenditures for the above funds are not included in the expenditure calculations of this section, the revenue from these sources is also not included in the revenue analysis, below.

Then, the Borough expenditures associated with existing nonresidential development are isolated from the net expenditures using the "proportional valuation method" of *The New Practitioner's Guide to Fiscal Impact Analysis*, by the Rutgers University Center for Urban Policy Research (1985). First, a portion of the total Borough expenditures is assigned to existing nonresidential development, based on the average value of property. According to the Monroe County Assessment Office report dated March 2, 2023, the total assessed value of the 1,548 properties in Mount Pocono Borough is \$271,146,430, yielding an average assessed value of \$175,159. Of those properties, 213 are nonresidential (commercial, industrial, institutional, utility, etc., whether taxable or exempt), with a total assessed value of \$116,821,600 (representing 43.1 percent of the Borough total), and an average assessed value of \$548,458. The proportion of average nonresidential assessed value to average Borough assessed value (residential and nonresidential combined) is 3.13, which is then used to determine the refinement coefficient of 1.34 from a graph in the *New Practitioner's Guide*. The refinement coefficient is based on empirical research by the Rutgers University CUPR, and is necessary to adjust the costs of existing nonresidential development in communities without extensive nonresidential development of very high average assessed value, such as Mount Pocono Borough. By comparison, in communities where the ratio between the average nonresidential assessment and the average overall assessment is above 6, an economy of scale reduces the nonresidential expenditures on a per square foot basis, and the refinement coefficient is below 1.00.

The proportion of Borough assessed value in nonresidential uses (43.1 percent) is then multiplied by the refinement coefficient of 1.34, and by the 2023 net Borough operating expenditures of \$2,322,826 (cell D20). The result of this calculation is that \$1,341,037 of the net Borough operating expenditures (representing 57.7 percent) is attributable to existing nonresidential development (cell D21).

The Borough expenditures associated with the proposed development are also determined using the

proportional valuation method. The proposed development has a projected assessed value of \$69,603,423 (cell D6) which is 59.6 percent of the assessed value of all 213 existing nonresidential properties in the Borough (which is \$116,821,600). The ratio of the projected assessed value of the proposed development (\$69,603,423) to the average assessed value of existing nonresidential properties in the Borough (\$548,458) is 126.9, which is used to determine a refinement coefficient of 0.08 from the same graph in the *Guide*. Then, the proportion of proposed assessed value to existing nonresidential assessed value (59.6 percent) is multiplied by the refinement coefficient of 0.08 and by the 2023 Borough operating expenditures attributable to existing nonresidential development (\$1,341,037, cell D21). The result of this calculation is that the proposed development is projected to generate \$63,920 in Borough expenditures each year (cell F6), or \$53 per 1,000 square feet of development (cell G6).

Annual Mount Pocono Borough Revenue

The annual Borough revenue is determined by adding the following sources:

- Real estate tax revenue, based on the Borough total tax rate of 6.503 mills (cell D22) comprised of the following component tax rates as shown in the table below.

Fund	Millage Rates
General Fund	5.150
Road Rehab Fund	0.965
Public Library Tax	0.155
Fire Company Tax	0.155
Emergency Management Tax	0.078
TOTAL	6.503

The 6.503 mills (cell D22) are applied to the projected assessed value of the proposed development (totaling \$69,603,423, cell D6). The annual real estate tax revenue is projected to total \$452,631 (cell B11).

- Earned income tax revenue, determined by multiplying the number of workers (550, cell E6) by the average annual worker salary of \$45,601 (cell I18; see the Demographics section, above) and by the Borough's nonresident worker earned income tax rate of 1.0 percent. Given the fact that nearly all municipalities in Monroe County charge the earned income tax, this figure is then reduced by 95 percent to account for those workers who live in such municipalities. Mount Pocono Borough is projected to retain only 5 percent of the earned income tax revenue it collects from the nonresident workers, and the remaining 95 percent is projected to be forwarded to the municipalities where these nonresident workers live. The annual earned income tax revenue is projected to total \$12,540 (cell C11).
- Local services tax revenue, determined by applying the tax rate of \$52 per worker per year to the projected 550 workers in the proposed development (cell E6). The annual local services tax revenue at buildout and full occupancy is projected to total \$28,600 (cell D11). Please note that this figure represents the number of full time equivalent positions, not the number of workers. The number of employees is likely to be higher through turnover and part time workers, thereby increasing the annual local services tax revenue to the Borough.
- Miscellaneous and liquid fuels revenue, determined in two ways. The miscellaneous revenue is determined by dividing the Borough's budgeted revenue from development related funds (\$1,000, representing 10 percent of the total revenue in this category associated with existing and not new

development, which is \$10,000; see the expenditure analysis, above) plus the 2023 Borough revenue for cable TV franchise fee of \$15,000, for a total of \$16,000, divided by the 2023 estimated 1,448 units in the Borough (from the 2020 U.S. Census), and that per unit revenue of \$11.05 is applied to the number of square feet in the proposed development divided by 10,000. In other words, each 10,000 square feet of proposed warehouse development is projected to generate the same miscellaneous revenue as one home in the Borough. The annual miscellaneous revenue is projected to total \$1,331. The liquid fuels revenue is determined by applying the 2023 PennDOT subsidy of \$3,211.1431 to the projected 3,467 linear feet (or 0.66 mile) of new roadway to be offered for dedication to the Borough (the loop road). The annual PennDOT liquid fuels subsidy is projected to be \$2,109. The annual miscellaneous and liquid fuels revenue is projected to total \$3,439 (cell E11).

- Interest earnings, based on the projected assessed value of the proposed development (\$69,603,423, cell D6) divided by the Borough's total taxable assessed value (\$260,156,530, from the Monroe County Assessment Report, representing the total Borough assessment minus all government, utility, park and religious properties), and multiplied by the Borough's projected revenue of \$530 in interest earnings in the 2023 budget (\$500 in the General Fund and \$30 in the Road Rehab Fund). The annual interest earnings are projected to total \$142 (cell F11).

The annual Borough revenue from all sources is projected to total \$497,393 (cells G11), or \$413 per 1,000 square feet of development (cell H11). The annual net Borough impact (revenue minus expenditures) is projected to total positive \$433,432 (cell B15), or positive \$360 per 1,000 square feet of development (cell C15). Annual revenue is projected to exceed annual expenditures by 678.1 percent (cell D15), or nearly eight times. The projected annual surplus from the proposed development is equivalent to 15.7 percent of the total Borough budgeted expenditures of \$2,765,630.

Annual Pocono Mountain School District Expenditures

The number of square feet of development (1,204,494, cell B28 of the School District spreadsheet), average assessment per square foot (\$57.79, cell C28), and total assessment (\$69,603,423, cell D28) are the same as for the Borough impact, above. Since the proposed development is entirely nonresidential in nature, the number of Pocono Mountain School District students is projected to be 0 (cell F28).

The School District General Fund budgeted expenditures total \$232,500,000 for the 2022-2023 year (cell D40). The following pass-through funds are subtracted from this total:

Pass-Through Fund	Budgeted Amount
Public Utility Realty Taxes	\$135,000
Revenue from LEA Activities	\$25,000
Revenue from Intermediary Sources/Pass-Through Funds	\$1,580,000
Rentals	\$5,000
Services Provided Other Governments/LEA's	\$200,000
TOTAL	\$1,945,000

In addition, the PMSD budgetary reserve of \$945,000 is subtracted, representing funds not projected to be expended during the school year. The pass-through funds and budgetary reserve total \$2,890,000 (cell D41), with the remaining net School District expenditures totaling \$229,610,000 (cell D42). This figure is then divided by the 2022-2023 District-wide enrollment of 8,116 students (cell D43, from the November, 2022 PMSD *Enrollment History and Forecast*) to find the 2022-2023 PMSD net expenditure per student of \$28,291 (cell I40). This per student expenditure is applied to the 0 students projected to attend public

schools from the proposed development (cell F28) to determine the annual projected School District expenditures of \$0 (cell G28), or \$0 per 1,000 square feet of development (cell H28).

Annual Pocono Mountain School District Revenue

The annual School District revenue is determined by adding the following sources:

- Real estate tax revenue, based on the School District's 2022-2023 tax rate of 20.3500 mills (cell I41) applied to the projected assessed value of the proposed development (\$69,603,423, cell D28). The annual real estate tax revenue is projected to total \$1,416,430 (cell B33).
- Earned income tax revenue, which does not apply to nonresident workers in the District. The School District can tax the earned income of residents only. The annual earned income tax revenue from the proposed development is projected to total \$0 (cell C33).
- State and Federal revenue, determined by dividing the PMSD budgeted revenue from those sources totaling \$84,755,861 by the 2022-2023 PMSD enrollment of 8,116 (cell D43), or \$10,443 per public school student (cell I42), applied to the projected number of students from the proposed development (totaling 0, cell E28). The annual state and federal revenue is projected to total \$0 (cell D33).
- Earnings on investments, based on the projected assessed value of the proposed development (\$69,603,423, cell D28) divided by the School District's total taxable assessed value (\$6,741,619,621, according to the 2022-2023 PMSD budget), and multiplying by the School District's projected revenue from earnings on investments in the budget (\$1,061,811). The annual earnings on investments are projected to total \$10,963 (cell E33).

The annual School District revenue from all sources is projected to total \$1,427,392 (cell F33), or \$1,185 per 1,000 square feet of development (cell G33). The annual net School District revenue is projected to total positive \$1,427,392 (cell B37), or positive \$1,185 per 1,000 square feet of development (cell C37). Since there are no School District expenditures associated with the proposed nonresidential development, every dollar of revenue becomes surplus. The projected annual surplus from the proposed development is equivalent to 0.6 percent of the total School District budgeted expenditures of \$232,500,000. The projected annual surplus will effectively subsidize the education of 50 PMSD students.

ANALYSIS OF THE FISCAL IMPACT TO MOUNT POCONO BOROUGH

Of the Proposed Mount Pocono Crossing Warehouse

March 20, 2023

3									
4	Proposed Use	Number of	Assessment	Total	Total	Annual Borough	Expenditures		
5		SF	per GSF	Assessed Value	Workers	Expenditures	per 1,000 SF		
6	Warehouse	1,204,494	\$57.79	\$69,603,423	550	\$63,920	\$53		

7		Annual Borough Revenue							
8									
9	Proposed Use	Real Estate	Earned Income	Local Services	Misc. & Liquid	Interest	Total Annual	Revenue	
10		Tax	Tax	Tax	Fuels Revenue	Earnings	Revenue	per 1,000 SF	
11	Warehouse	\$452,631	\$12,540	\$28,600	\$3,439	\$142	\$497,353	\$413	

12				
13	Proposed Use	Annual Net	Annual Net Borough	Revenue >
14		Borough Revenue	Revenue per 1,000 SF	Expenditure
15	Warehouse	\$433,432	\$360	678.1%

16										
17	NOTES:									
18	2023 Borough Operating Expenditures (3 funds)		\$2,765,630	Average Annual Warehouse Worker Salary (BLS, 2021)		\$45,601				
19	Minus 2023 Pass-Through and Excluded Expenditures		\$442,804	2023 Borough Housing Unit Estimate		1,448				
20	2023 Net Borough Operating Expenditures		\$2,322,826	2023 PennDOT Liquid Fuels Subsidy per Mile		\$3,211,143				
21	2023 Borough Non-Residential Expenditures	57.7%	\$1,341,037	2023 Borough Interest Earnings		\$530				
22	2023 Borough Real Estate Tax Millage (all funds)		6.503							

A	B	C	D	E	F	G	H	I
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ANALYSIS OF THE FISCAL IMPACT TO THE POCONO MOUNTAIN SCHOOL DISTRICT

Of the Proposed Mount Pocono Crossing Warehouse

March 20, 2023

25									
26	Proposed Use	Number of SF	Assessment per GSF	Total Assessment	School Age Children per 1K SF	PMSD (Public School) Students	Annual School District Expenditures per 1,000 SF	Expenditures per 1,000 SF	
27									
28	Warehouse	1,204,494	\$57.79	\$69,603,423	0	0	\$0	\$0	

29									
30		Annual School District Revenue							
31	Proposed Use	Real Estate Tax	Earned Income Tax	State & Federal Revenue	Earnings on Investments	Total Annual Revenue	Revenue per 1,000 SF		
32									
33	Warehouse	\$1,416,430	\$0	\$0	\$10,963	\$1,427,392	\$1,185		

34									
35	Proposed Use	Annual Net School District Revenue	Annual Net School District Revenue per 1,000 SF						
36									
37	Warehouse	\$1,427,392	\$1,185						

38									
39	NOTES:								
40	2022-2023 PMSD Total Expenditures		\$232,500,000					2022-2023 PMSD Net Expenditure per Student	\$28,291
41	Minus Pass-Through Expenditures & Budgetary Reserve		\$2,890,000					2022-2023 PMSD Real Estate Tax Millage	20.3600
42	2022-2023 PMSD Net Expenditures		\$229,610,000					2022-2023 PMSD State/Federal Revenue per Student	\$10,443
43	2022-2023 PMSD Student Enrollment		8,116						

PROPOSED MOUNT POCONO CROSSING LERTA SCHEDULE

March 20, 2023

LERTA Year	LERTA Increment	Borough Impact					School District Impact		
		RE Tax Rev. *	Other Revenue	Total Revenue	Expenditures	Net Impact	RE Tax Rev. *	Expenditures	Net Impact
1	10%	\$52,820	\$44,580	\$97,400	\$63,920	\$33,480	\$166,344	\$0	\$166,344
2	20%	\$98,098	\$44,580	\$142,677	\$63,920	\$78,757	\$309,083	\$0	\$309,083
3	30%	\$143,375	\$44,580	\$187,955	\$63,920	\$124,034	\$451,822	\$0	\$451,822
4	40%	\$188,652	\$44,580	\$233,232	\$63,920	\$169,312	\$594,562	\$0	\$594,562
5	50%	\$233,930	\$44,580	\$278,509	\$63,920	\$214,589	\$737,301	\$0	\$737,301
6	60%	\$279,207	\$44,580	\$323,787	\$63,920	\$259,866	\$880,040	\$0	\$880,040
7	70%	\$324,484	\$44,580	\$369,064	\$63,920	\$305,144	\$1,022,779	\$0	\$1,022,779
8	80%	\$369,761	\$44,580	\$414,341	\$63,920	\$350,421	\$1,165,519	\$0	\$1,165,519
9	90%	\$415,039	\$44,580	\$459,618	\$63,920	\$395,698	\$1,308,258	\$0	\$1,308,258
10 +	100%	\$452,773	\$44,580	\$497,353	\$63,920	\$433,432	\$1,427,392	\$0	\$1,427,392
TOTALS		\$2,558,139	\$445,797	\$3,003,936	\$639,202	\$2,364,734	\$8,063,100	\$0	\$8,063,100

* Annual Real Estate Tax Revenue for the Borough and School District includes earnings on investments.

GEORGE ASIMOS
Attorney at Law

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Chadds Ford, PA 19317
georgeasimos@gmail.com
484.716.2057

September 13, 2023

Borough of Mount Pocono
1361 Pocono Blvd, Suite 100
Mount Pocono, PA 18344
Attn: Marissa Duffy, Manager

RECEIVED

SEP 13 2023

MT. POCONO BOROUGH

Dear Ms. Duffy:

In 2021 my client, CP Mt. Pocono, LLC received conditional use approval for the warehouse at Routes 940 and 611. Among the requirements was one to: "Establish for emergency purposes a secondary access for ingress and egress other than the main access to Industrial Park Drive." At that time the Applicant proposed, and Council approved, a right in-right out driveway onto Route 940 for the purpose. This was tentatively approved in the Conditional Use decision and specifically approved by approval of the Land Development Plans on March 1, 2022.

On further consideration of various factors, including the capacity of Industrial Park Drive, the other access rights reserved by the owner of the warehouse lot (described below), a lack of need as expressed by the prospective tenant, and a cost-benefit analysis, my client now proposes a different emergency access point.

Specifically, I am writing to submit Sketches – in anticipation of a proposed Amended Land Development Plan – to refrain from building the right in/right out access driveway to Route 940 and instead provide an emergency access for the warehouse lot via the shopping center intersection at Oak Street, connecting via the existing driveway on the lot where the Advance Auto building is located.

The Borough may rightly ask a few questions about this proposal:

Is it necessary to amend the conditional use decision?

We do not believe it is necessary to amend the conditional use decision because the requirement is simply to establish a "secondary access other than the main access to Industrial Park Drive";

and that the Route 940 option was just one proposed means to achieve that, subject to permitting and approval by Council with the land development plans. We believe that amendment of the land development plans is appropriate and gives the Borough all necessary opportunity to review the proposed revision.

Does CP Mt. Pocono LLC have the legal property right to make that access connection?

Yes, it does. That right is specifically guaranteed by (a) the 1999 Major Subdivision Plan approved by the Borough for the "Walmart Site" but which also included the "warehouse site"; and (b) the Easements, Covenants and Restrictions document negotiated, signed and recorded at the time of that plan approval by Walmart and Pocono Star Properties. The plan allows the owner of the warehouse lot (Lot 4 on the Plan) to expand the existing Walmart Driveway Access and Utility Easement to provide access to the warehouse lot. Pocono Star owned all of that land that is now occupied by the Walmart, Advance Auto and the warehouse. A copy of the plan and the ECR document is included with this letter.

Is there adequate space on the Advance Auto site to install the emergency driveway connection?

Yes, the original plan for the Walmart/Advance site shows an easement there that is much wider than what is needed for an emergency access. The existing Advance Auto driveway already extends nearly to the warehouse property line.

Will the Advance Auto owner be kept informed of the plans for extending that driveway?

Yes, though the easement allows for the connection without any discretion by others (based on the ECR and the approved plans) it only makes sense that the owner will be kept informed and provided with all necessary information about the proposal. The 1999 plan already approves the access, so we do not believe that plan must be revised nor consent obtained from the other owners to do so.

Is there sufficient capacity at the signalized intersection of 940 and Industrial Park Drive entrance as well as the entrance to the new Pocono Star Boulevard to absorb the traffic from elimination of the Route 940 entrance without reduction in function?

Yes, the currently approved Route 940 access is right in-right out only. The traffic that would use it and that would be diverted if it is not built would not be significant. The majority of the truck traffic would use Industrial Park Blvd regardless because that traffic would be coming from Route 380 and the driveway to 940 would not be usable since it would be right in/right out only. Few trucks would approach from Route 611. As shown by the attached analysis dated September 7, 2023 by Traffic Planning Design (who have been involved from the beginning) the functionality of the signalized intersection would not be materially changed due to the low volume that was forecasted for the Route 940 driveway.

Borough of Mount Pocono
September 13, 2023
Page 3

Does PennDOT approve this change?

Yes, although PennDOT approved the Route 940 entrance, it has been reported that its reviewers would prefer not to have the additional entry point on Route 940.

Does the proposed emergency entrance meet the needs of the Mt. Pocono emergency services providers?

We are also sending with this letter a fire truck turning radius template diagram confirming the proposed access point can accommodate the same equipment analyzed in the original approval. Of course, the developer will consult with the Fire Chief to confirm the design satisfies emergency service access requirements.

Will there be any effect on the stormwater management for the site?

Yes, but only to reduce flow due to reduced impervious cover. No change is needed to the stormwater capture basins.

If possible, we would like to brief Council on this proposal at the September 19, 2023 Work Session, but we do not require any vote. In general we would like to have any comments on this approach as soon as reasonable.

Respectfully,



George Asimos

Enclosures:

1999 Easement Covenants and Restrictions
1999 Major Subdivision Plan
Conditional Use Decision
Alternate Driveway Plans
Traffic Planning & Design letter
Fire Truck Turning Radius diagram



TRAFFIC PLANNING AND DESIGN, INC.

WWW.TRAFFICPD.COM

Memo

To: Matthew Frank, Newland Capital Group
From: Robert Hoffman, P.E., PTOE, Traffic Planning & Design, Inc.
Date: September 7, 2023
Re: Revised Access – Mount Pocono Crossings
 Mount Pocono Borough, Monroe County, PA
 TPD# SSAA 00049

As requested, Traffic Planning and Design, Inc. (TPD) has evaluated operations at the intersection of Route 940 & Industrial Park Drive with the removal of the previously proposed right-in/right-out driveway serving the warehouse facility. Previous plans for the site included two driveways; one access to Industrial Park Drive via Pocono Star Boulevard and one right-in/right-out access to Route 940. With the removal of the right-in/right-out driveway, all site traffic will utilize Industrial Park Drive. The revised traffic volumes are shown on the attached schematic figures.

Assuming closure of the right-in/right-out driveway and the reassigned traffic volumes, TPD performed capacity analyses at the intersection of Route 940 & Industrial Park Drive for the weekday A.M. and weekday P.M. peak hours using the Synchro 11 software according to the methodologies contained in the Highway Capacity Manual (HCM), 6th Edition. The results are summarized in **Table 1**.

TABLE 1
 LEVEL OF SERVICE/DELAY (SECONDS) SUMMARY
 INTERSECTION OF ROUTE 940 & INDUSTRIAL PARK DRIVE

Movement	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour		
	Existing Condition	Design Year 2028		Existing Condition	Design Year 2028	
		Base	Projected		Base	Projected
EB L	D	D	D	D	D	D
EB T	B	A	B	C	C	C
EB R	A	A	A	B	B	B
WB L	D	D	D	D	D	D
WB T	A	A	A	B	B	C
WB R	A	A	A	B	B	B
NB L	D	D	D	D	D	D
NB T	A	A	A	D	A	D
NB R	D	D	D	D	D	D
SB L	D	D	D	D	D	D
SB L/T	D	D	D	D	D	D
SB R	A	A	A	A	C	D
ILOS	B (14.3)	B (10.7)	B (18.3)	C (26.1)	C (26.9)	C (31.8)

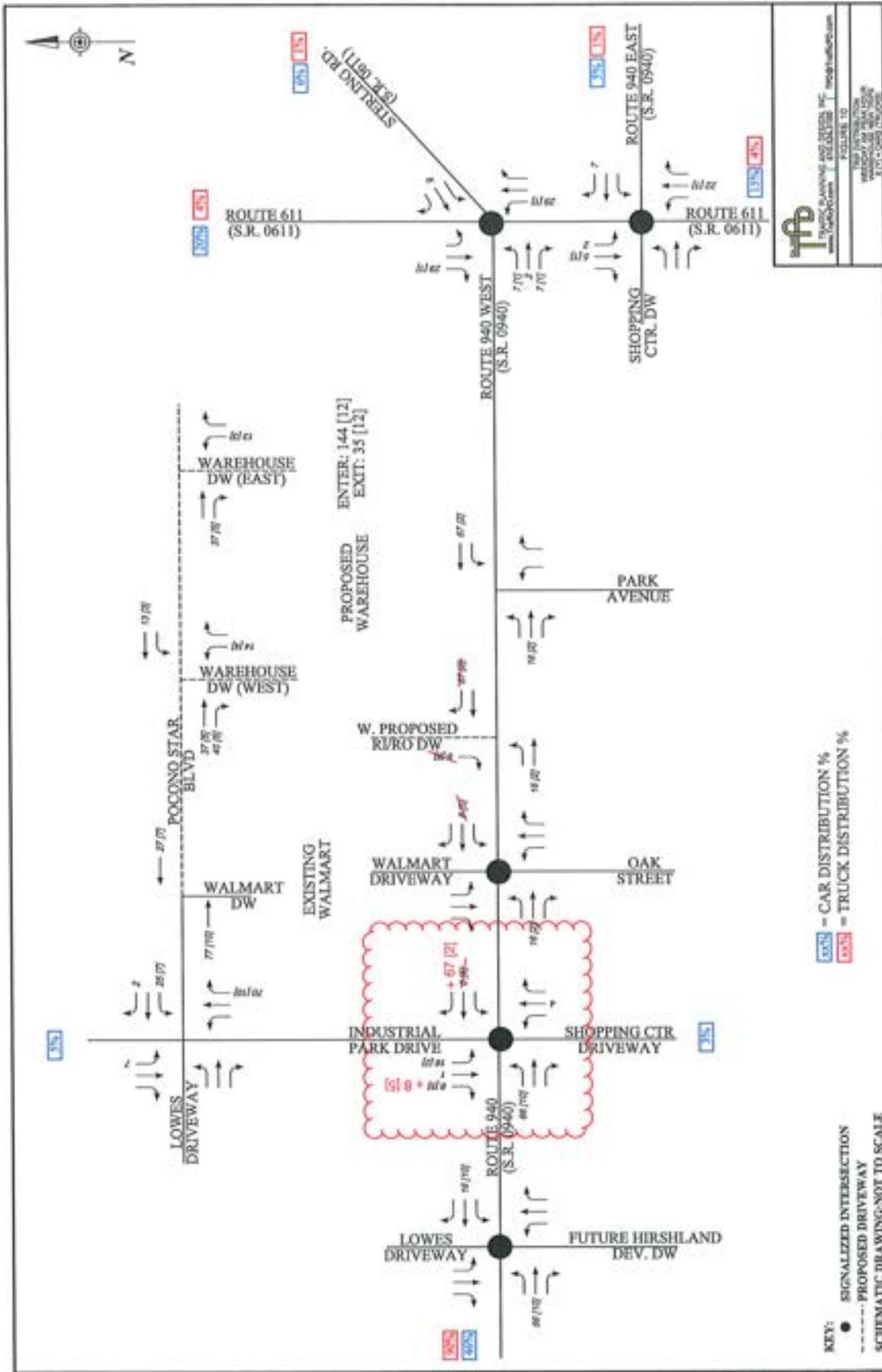
TPD also conducted 95th percentile queue analyses at the intersection of Route 940 & Industrial Park Drive for the weekday A.M. and weekday P.M. peak hours using the Synchro 11 software. For this analysis, the 95th percentile queue is defined as the queue length that is exceeded in 5% of the signal cycles. As an example, for a signal with a 90-second cycle, this means that the 95th percentile queue length will be exceeded during 2 of the 40 signal cycles that occur during the peak hour. The results are summarized in **Table 2** for the analyzed peak hours.

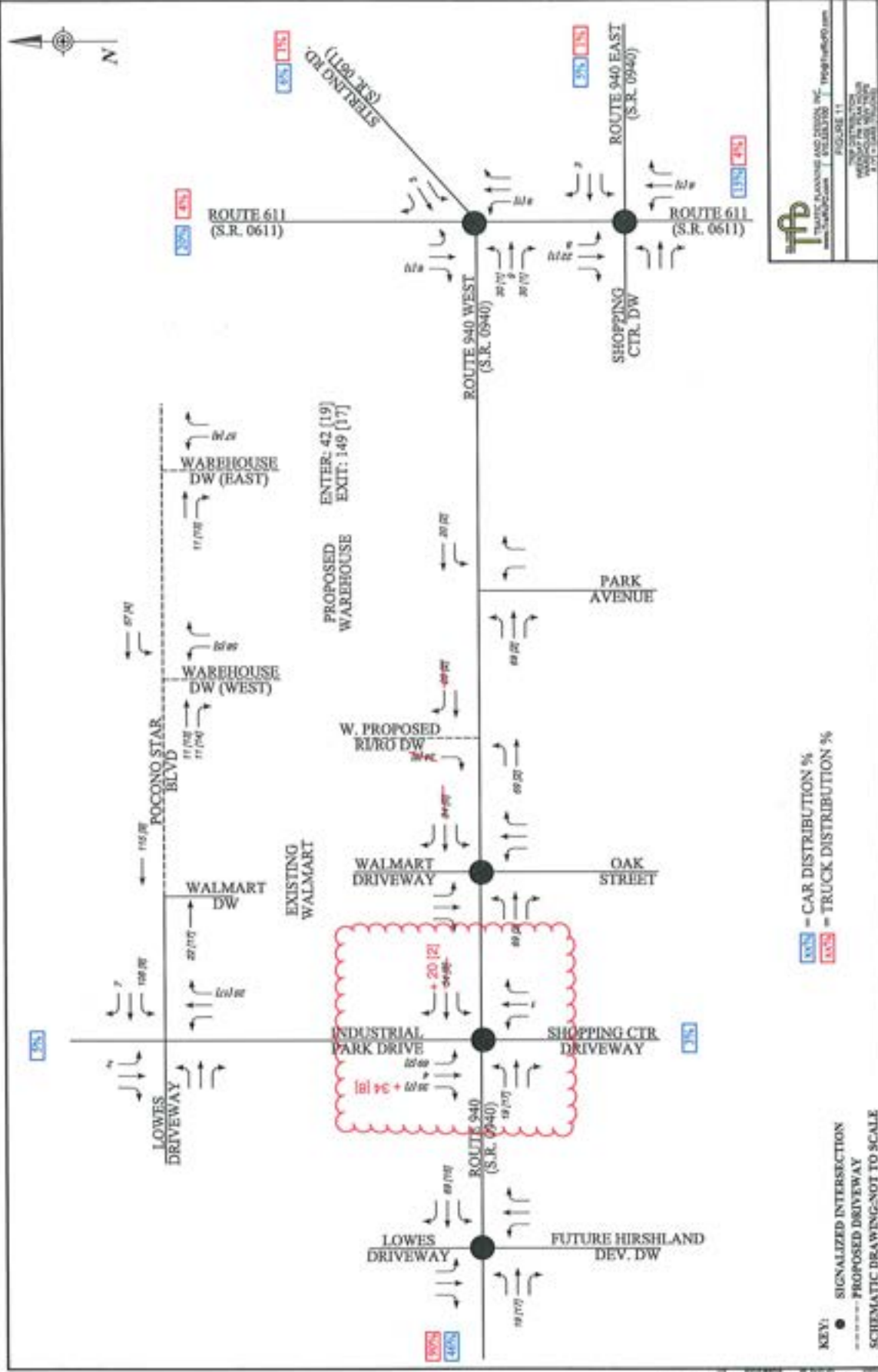
TABLE 2
95th PERCENTILE QUEUE LENGTH (FEET)
INTERSECTION OF ROUTE 940 & INDUSTRIAL PARK DRIVE

Movement	Storage Length	Weekday A.M. Peak Hour		Weekday P.M. Peak Hour	
		Design Year 2028		Design Year 2028	
		Base	Projected	Base	Projected
EB L	360'	93	133	70	88
EB T	--	120	130	223	238
EB R	350'	23	25	70	75
WB L	200'	20	20	88	88
WB T	--	28	58	203	238
WB R	250'+	8	33	25	45
NB L	180'	48	48	103	110
NB T	180'	0	0	0	150
NB R	180'	18	18	30	30
SB L	410'	40	43	103	140
SB L/T	410'	48	53	125	188
SB R	385'	0	0	13	105

Based on the analysis performed, the intersection of Route 940 & Industrial Park Drive will operate at the same overall intersection level of service (ILOS) under 2028 base conditions and 2028 projected conditions with all movements operating at an acceptable level of service D or better. The 95th percentile queue length can be accommodated within the available storage length for all turning movements. It is important to note that the operational results (levels of service and queue lengths) are generally consistent with the findings of the original traffic study prepared for this project assuming the right-in/right-out driveway. Therefore, it is our opinion that the elimination of the right-in/right-out driveway will not have a detrimental effect on traffic operations at the signalized intersection of Route 940 & Industrial Park Drive.

Attachments: Revised Trip Redistribution Figures

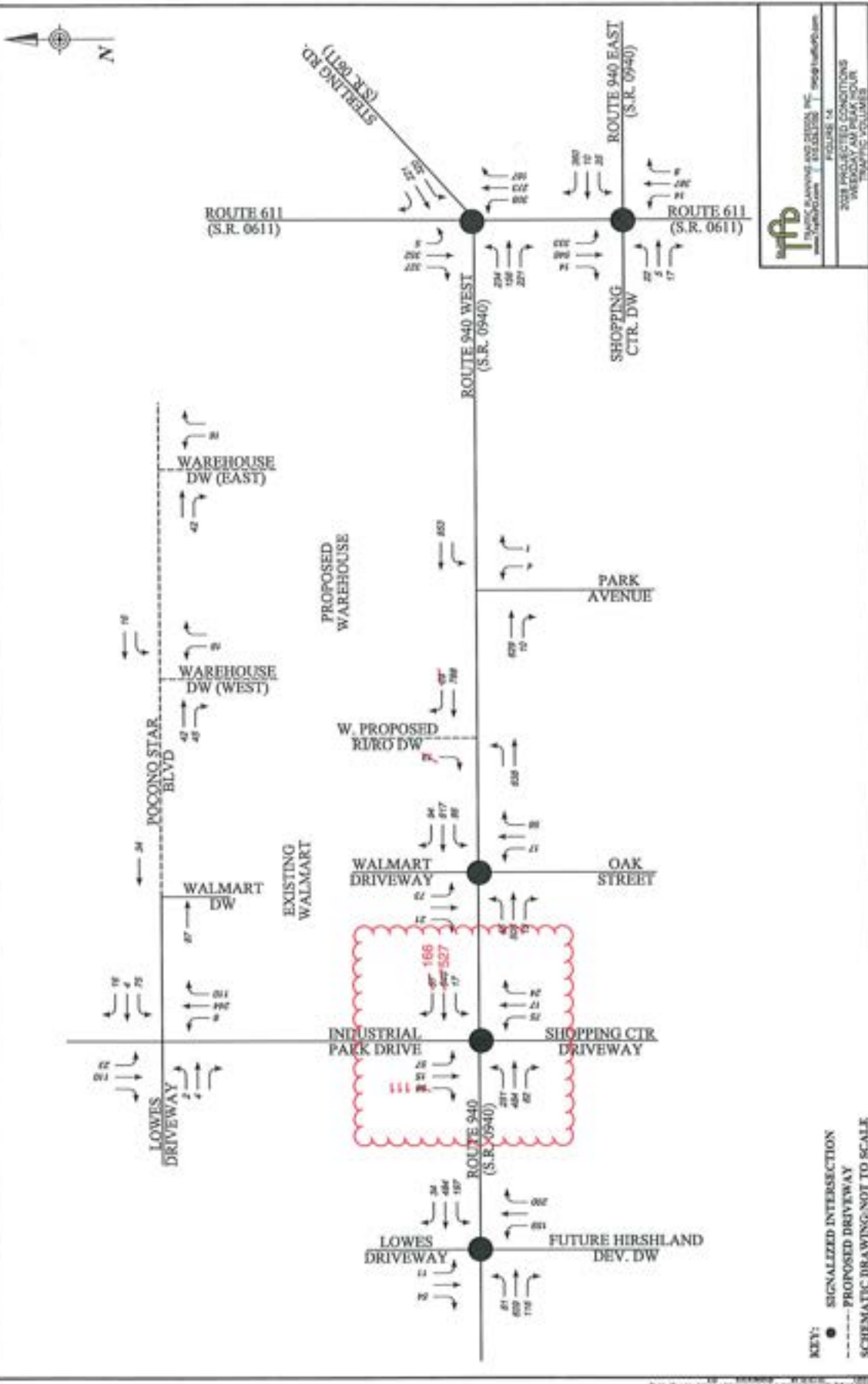


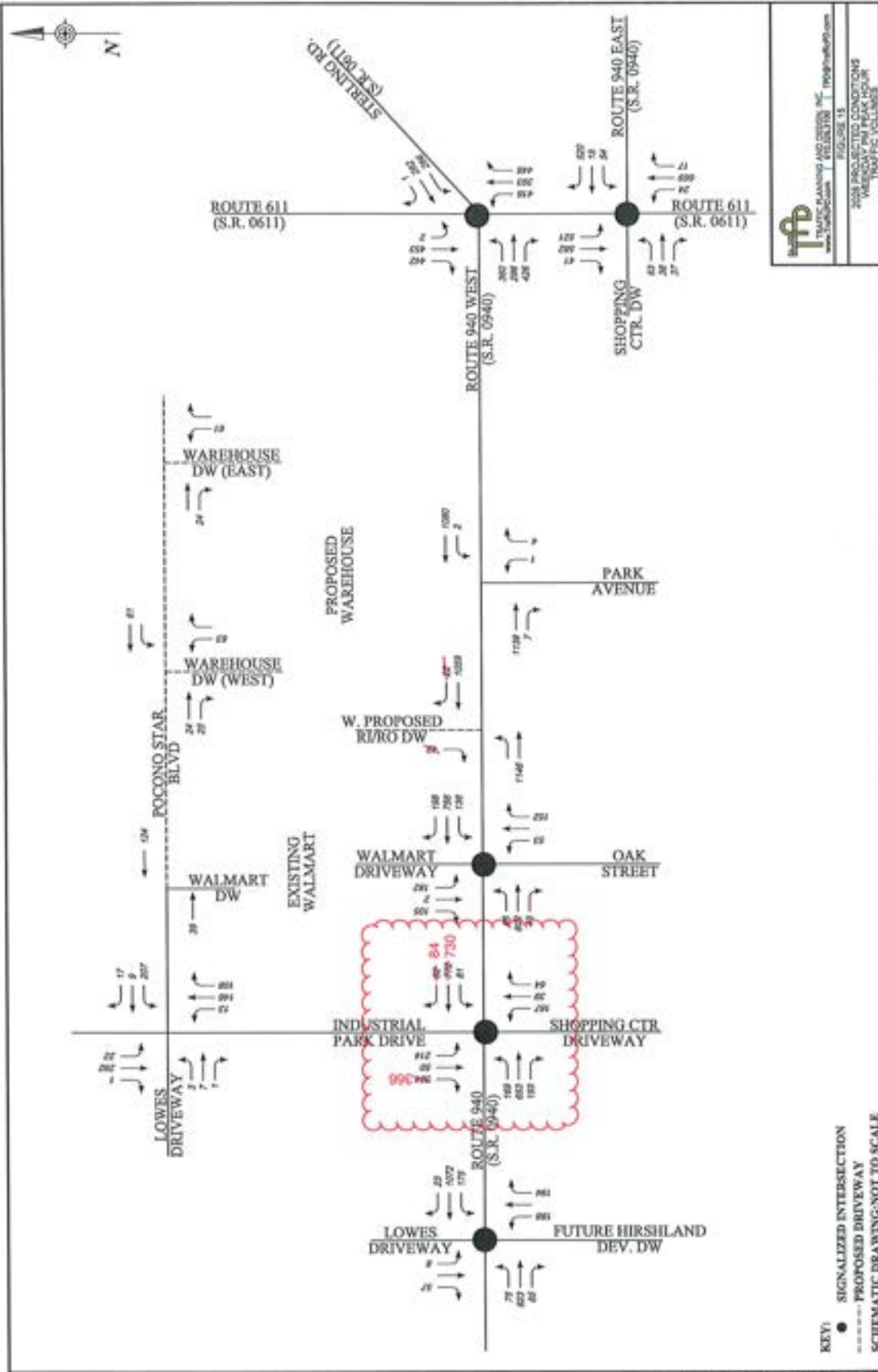


tfp
 TRAFFIC PLANNING AND DESIGN, INC.
 1000 W. MAIN ST., SUITE 200
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 PHONE: 561-833-2200
 FAX: 561-833-2201
 WWW.TFPDESIGN.COM

FIGURE 11
 WOODS CREEK, FLORIDA
 WOODS CREEK, FLORIDA

45% = CAR DISTRIBUTION %
 15% = TRUCK DISTRIBUTION %





tff
 TRAFFIC PLANNING AND DESIGN, INC.
 www.tffinc.com | PHONE: 608-785-0000
 FIGURE 15
 2008 PROJECTED CONDITIONS
 WAREHOUSE DEVELOPMENT
 TRAFFIC VOLUMES



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2	3427641.79	78.69
3	660270.35	15.01
4	95107.77	2.18



ALL RIGHTS RESERVED
 THIS PLAN IS THE PROPERTY OF MICHAEL J. FASONICK, INC.
 AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS
 WITHOUT THE WRITTEN PERMISSION OF MICHAEL J. FASONICK, INC.
 11/1/12



ALTERNATIVE EMERGENCY ACCESS TO GLASSBORO PARK PLANT	
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MOUNT POCONO, PA STORE #2365

**EASEMENTS WITH COVENANTS AND
RESTRICTIONS AFFECTING LAND ("ECR")**

THIS AGREEMENT made this 5th day of May, 1999, by and
between POCONO STAR PROPERTIES, a Pennsylvania Limited Partnership
("Pocono Star Properties" and/or "PSP") and WAL-MART REAL ESTATE
BUSINESS TRUST, a Delaware business trust ("Wal-Mart").

BACKGROUND

Wal-Mart and Pocono Star Properties are the owners of
certain tracts, pieces or parcels of land lying situate and being
in the Borough of Mount Pocono, County of Monroe and Commonwealth
of Pennsylvania, hereinafter described, and desire that their
respective properties be held, sold, and conveyed subject to the
easements, covenants, conditions, restrictions, rights, and
affirmative obligations set forth in this instrument all of which
are established for the purpose of enhancing the marketability and
desirability of their respective properties and all of which
rights, affirmative obligations, easements, covenants,
restrictions, and conditions shall run with the land and shall be
binding upon all parties having or acquiring any right, title or
interest in and to the hereinafter described property.

8K2063PG5549

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, do hereby agree as follows:

1. **Definitions.** The following terms as utilized in this Agreement shall have the meanings, definitions, and references as hereinafter provided:

(a) **Building Areas:** The area permitted by Mount Pocono Borough Ordinance for improvement within the lot lines of any lot depicted on the Subdivision Plan or otherwise designated on the Subdivision Plan or Land Development Plan for such lot as the Building Area.

(b) **Common Areas:** The Common Areas shall consist of all of the following areas denoted on the Subdivision Plan and/or the Wal-Mart Land Development Plan as well as certain improvements not depicted on the Subdivision Plan or the Wal-Mart Land Development Plan that may be constructed hereafter:

(1) The POCONO STAR BOULEVARD RIGHT-OF-WAY on Lot No. 4 as depicted on the Subdivision Plan and the Wal-Mart Land Development Plan;

RECORDER OF DEEDS
MONROE COUNTY
PENNSYLVANIA

INSTRUMENT NUMBER

199916618

RECORDED ON

May 11, 1999

2:50:05 PM

RECORDING FEES \$75.00
STATE MILT TAX \$0.50
COUNTY ARCHIVES FEE \$1.00
MOR ARCHIVES FEE \$1.00
TOTAL \$77.50

(2) The WAL-MART DRIVE on Lot No. 3 as depicted on the Subdivision Plan and the Wal-Mart Land Development Plan;

(3) WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT on Lot No. 3 as depicted on the Subdivision Plan and the Wal-Mart Land Development Plan;

(4) The STORMWATER DRAINAGE AREA on Lot No. 3 designated as Sedimentation/Detention Basin No. 1 on the Wal-Mart Land Development Plan (Sheet S-8 entitled "Erosion and Sedimentation Control Plan"); and

(5) The following improvements, if constructed, shall be Common Areas subject to the terms and conditions of this Agreement:

(i) The extension of the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT to the west across Lot No. 2 to the intersection with Industrial Park Drive;

(ii) The extension of the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT to the east across Lot No. 1 and over Lot No. 4;

(iii) Any entrance and high-volume driveway providing a means of ingress, egress, and regress to and from Pennsylvania Route 940 at any location upon Lot No. 4 which

connects with the extension of the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT or the POCONO STAR BOULEVARD RIGHT-OF-WAY; and

(iv) POCONO STAR BOULEVARD RIGHT-OF-WAY on Lot No. 4 as depicted on the Subdivision Plan.

(c) Discount Department Store: a discount retail store exceeding 50,000 square feet that includes, or is substantially similar to, K-Mart, Target, Ames, and Hills.

(d) Out Parcels: Lot Nos. 1 and 2 as depicted on the Subdivision Plan;

(e) PSP Property: Lot Nos. 1, 2, 4, and 5 depicted on the Subdivision Plan and constituting part of that certain premises described in a certain Deed recorded on June 13, 1995 in the Recorder's Office in Record Book Volume 2009, Page 1429;

(f) Parking Area: The number of parking spaces required by Mount Pocono Borough Ordinances for the parking of motor vehicles on any lot denoted on the Subdivision Plan or the number of vehicle parking spaces set forth on any approved Land Development Plan for any such lot.

(g) Recorder's Office: The Office for the Recording of Deeds, etc., at Stroudsburg, Pennsylvania, in and for the County of Monroe;

(h) Subdivision Plan: The plan entitled "Major Subdivision Plan, Arthur Berry, Jr. & Bruce Berry Subdivision" prepared by Michael J. Pasonick, Jr., Inc. and intended to be recorded in the Recorder's Office immediately prior to the recordation of this Agreement, which Subdivision Plan as so recorded is incorporated herein by this reference;

(j) Wal-Mart Land Development Plan: The plan entitled "Major Land Development Plans, Wal-Mart Real Estate Business Trust, Route 940, Mount Pocono Borough, Monroe County, PA" prepared by Michael J. Pasonick, Jr., Inc. and intended to be recorded in the Recorder's Office immediately prior to the recordation of this Agreement, which Land Development Plan as so recorded is incorporated herein by this reference;

(k) WAL-MART DRIVE: The high-volume entrance and driveway on the northern right-of-way line of Pennsylvania Route 940 immediately to the north of and aligned with Oak Street as depicted on the Subdivision Plan and the Wal-Mart Land Development Plan;

(l) Wal-Mart Property: Lot No. 3 as depicted on the Subdivision Plan and as more fully described on Exhibit "A" annexed hereto and made part hereof by this reference.

2. Outparcel Design and Construction.

(a) Buildings. The design and construction of buildings within the Building Areas of the lots constituting the Out Parcels shall be of high quality. No building on the Out Parcels shall have a metal exterior other than canopies, trim and other architectural detail.

(b) Location. No building shall be constructed on the Out Parcels, either for immediate development or future expansion, except within the Building Area.

(c) Outparcel Development. Lot Nos. 1 and 2 shall be developed only under the following guidelines:

(1) No building(s) constructed on either Lot No. 1 or Lot No. 2 shall exceed twenty-four (24') feet in height, as measured from the mean finished elevation of the Parking Area of the respective Lot Nos. 1 and 2.

(2) The aggregate square footage of any building or buildings constructed on Lot No. 1 (excluding loading and refuse removal areas) shall not exceed 6,250 square feet in size without the prior written approval of Wal-Mart. Notwithstanding the foregoing, no more than two (2) buildings may be constructed upon Lot No. 1.;

(3) The aggregate square footage of any building or buildings constructed on Lot No. 2 (excluding loading and refuse removal areas) shall not exceed 12,000 square feet in size without the prior written approval of Wal-Mart. Notwithstanding the foregoing, no more than two (2) buildings may be constructed upon Lot No. 2;

(4) Any rooftop equipment on Lot Nos. 1 and 2 shall be screened in a manner reasonably satisfactory to Wal-Mart;

(5) No rooftop sign (i.e., sign attached to the roof and above the permitted twenty-four (24') foot roof peak) shall be erected on any building constructed on either Lot No. 1 or Lot No. 2;

(6) No freestanding identification sign may be erected on either Lot No. 1 or Lot No. 2 at variance to local ordinance without the prior approval of Wal-Mart. In no event or circumstance whatsoever shall any freestanding identification sign on Lot Nos. 1 or 2 exceed the height of the Wal-Mart pylon sign or block or unreasonably interfere with the visibility of the Wal-Mart store or Wal-Mart pylon sign. In the absence of a Wal-Mart pylon sign, no freestanding identification sign on Lot Nos. 1 or 2 shall be at variance with Mount Pocono Borough ordinances then in

effect. Notwithstanding the foregoing, entrance-exit signs may be erected on Lot Nos. 1 and 2 to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, shall not exceed 3' 3" in height, and the type and location of such signs shall not be at variance to local ordinance without the prior written approval of Wal-Mart;

(7) No improvements shall be constructed, erected, expanded or altered on Lot Nos. 1 and 2 until the plans for same (including site layout, exterior building materials and colors, finishes and parking) have been approved in writing by Wal-Mart. If Wal-Mart objects to plans for improvements on Lots Nos. 1 and 2 pursuant to this paragraph, such objection(s) shall be in good faith and shall be based upon non-compliance with the provisions of this Agreement or issues specified in paragraph 2(c) of this Agreement;

(8) Lot Nos. 1 and 2 shall provide and maintain a parking ratio of: (a) ten (10) parking spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) square feet in size, provided, however, if any restaurant or entertainment use exceeds five thousand (5,000) square feet in

size, then, and in such event, the required parking ratio shall be ten (10) parking spaces for every one thousand (1,000) square feet of building space for the first five thousand (5,000) square feet of building space and fifteen (15) parking spaces for every one thousand (1,000) square feet of building space in excess of five thousand (5,000) square feet in size; or (b) five and one half (5-1/2) parking spaces per one thousand (1,000) square feet of building space for any other use;

(9) Landscaping areas shall be installed and maintained on Out Parcel Lot Nos. 1 and 2 pursuant to local ordinance, and shall not be at variance to local ordinance unless otherwise approved by Wal-Mart.

(10) Until graded, Lot Nos. 1 and 2 shall be maintained in their natural condition. Following grading of Lot Nos. 1 and/or 2 each of said lots shall be kept neat, orderly, planted in grass and trimmed;

(11) Ingress and egress to and/or from Lot No. 2 shall be made only from Industrial Park Drive and/or from the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT unless otherwise required by governmental authority for proper ingress and egress to and/or from Lot No. 2. In no event, however, shall the owner,

lessee, or developer of Lot No. 2 locate any ingress or egress to or from Lot No. 2 along the southern boundary line of Lot No. 2 (also the northern right-of-way line of Pennsylvania S.R. 940) nor shall any such owner, lessee, or developer locate or construct more than two (2) curb cuts whose opening(s) in the aggregate shall exceed sixty (60) lineal feet unless required by governmental authority for proper ingress and egress to and from Lot No. 2.

(12) Unless otherwise required by governmental authority, ingress and egress to and/or from Lot No. 1 shall be made only from Lot No. 4 or from the extension of the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT to the east across Lot No. 1 if such extension is designed and constructed by PSP at its sole cost and expense. In no event, however, shall the owner, lessee, or developer of Lot No. 1 locate any ingress or egress to or from Lot No. 1 along the southern boundary line of Lot No. 1 (also the northern right-of-way line of Pennsylvania S.R. 940) nor shall any such owner, lessee, or developer locate or construct more than two (2) curb cuts whose opening(s) in the aggregate shall exceed sixty (60) lineal feet unless required by governmental authority for proper ingress and egress to and from Lot No. 1.

3. Restrictions on Use of the Out Parcels:

(a) All buildings, structures or improvements on

the Out Parcels shall only be used for retail or commercial purposes. No building, structure or improvement on the Out Parcels may be used without Wal-Mart's prior written consent, for a: (i) theater; (ii) night club; (iii) bowling alley; (iv) health spa; (v) cafeteria; (vi) billiard parlor or other place of recreation or amusement (such as video parlor or arcade); (vii) a business whose principle business is serving, selling, or otherwise dispensing alcoholic beverages or alcoholic products for on-site or off-site use, except for restaurants; and/or (viii) discount department store or a variety, general or "dollar" store;

(b) Each owner(s) of a lot constituting part of the Out Parcels, as well as each owner(s) of Lot No. 4 after the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT is extended to the east into Lot No. 4, or any occupant or tenant thereof shall maintain comprehensive public liability insurance, property damage and all-risk hazard insurance on such property and all buildings, appurtenances and other improvements located on such property. Such insurance shall (i) be carried with reputable companies licensed to do business in the Commonwealth of Pennsylvania; (ii) have liability limits of at least One Million (\$1,000,000.00) Dollars for each occurrence, bodily injury and property damage

combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder; and (iv) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Pocono Star Properties and Wal-Mart;

4. Curb Cuts. Wal-Mart reserves the right, liberty, and privilege of locating and constructing at its cost and expense up to three curb cuts accessing POCONO STAR BOULEVARD RIGHT-OF-WAY, provided, however, Wal-Mart shall not construct or install said curb cuts until the construction of POCONO STAR BOULEVARD RIGHT-OF-WAY is completed by Pocono Star Properties, its successors or assigns. Wal-Mart further reserves the right, liberty, and privilege of utilizing POCONO STAR BOULEVARD RIGHT-OF-WAY for vehicular and pedestrian ingress, egress, and regress by its invitees, vendors, customers, agents, servants, and employees to and from the Wal-Mart Property in the event Pocono Star Properties, its successors and assigns, improves and constructs POCONO STAR BOULEVARD RIGHT-OF-WAY for vehicular use, provided, however, Wal-Mart shall first pay Pocono Star Properties a pro rata share of the documented and paid construction costs for POCONO STAR BOULEVARD RIGHT-OF-WAY which pro rata share shall be determined based upon a

ratio of the projected vehicle trip generation from Lot No. 3 utilizing POCONO STAR BOULEVARD RIGHT-OF-WAY with the projected vehicle trip generation from all improvements on Lot No 4. utilizing POCONO STAR BOULEVARD RIGHT-OF-WAY as said projected traffic trip generation is calculated and determined by a mutually satisfactory reputable and experienced licensed Pennsylvania traffic engineer using the then most current Institute of Transportation Engineer's data.

5. Competing Business. Pocono Star Properties covenants and agrees that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Lot No. 3, either as owner or lessee: (a) no space in or any portion of Lot No. 4 depicted on the Subdivision Plan shall be leased or occupied by or conveyed to any other person or entity for use as a discount department store until after December 31, 2008; (b) after January, 1, 2009, no front door of any discount department store having potential access across WAL-MART DRIVE shall be positioned within a one quarter mile (1,320 feet) arc to the east of the Wal-Mart front door; and (c) any land development proposed for Lot No. 4 of the Subdivision Plan shall be designed and laid out with at least one (1) new high-volume driveway and entrance off of Pennsylvania S.R. 940 designed and

constructed to effectively provide a complete means of ingress, egress, and regress for deliveries, service, customers or other vehicles to Lot No. 4. In the event the conditions set forth in this paragraph 5 are violated or breached, Wal-Mart shall have the option, but not the obligation, to terminate the rights and easements herein set forth benefitting Lot No. 4 and/or to pursue any relief that may be available at law or in equity in the event the covenants, conditions, and obligations set forth in this paragraph 5 are breached or violated.

6. No Covenant to Build or Commence Operations.

Notwithstanding anything to the contrary contained herein, it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant by either party hereto, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by either Wal-Mart or Pocono Star Properties on their respective property depicted on the Subdivision Plan. Both Wal-Mart and Pocono Star Properties recognize and agree that the other party may, in its sole discretion and at any time during the term of this Agreement, cease the operation of its business(es) on its respective property; and both Wal-Mart and Pocono Star Properties hereby mutually waive

their respective rights to commence any legal action for damages or for equitable relief which might be available arising out of such cessation of business activity and/or the decision not to commence the operation of a business.

7. Use of Common Areas.

(a) Grant of Easements.

(1) Under and subject to the terms, covenants, conditions, and restrictions of this Agreement, each party, as grantor, hereby grants and conveys to the other party, as grantee, for the use of their respective customers, agents, invitees, licensees, tenants, and employees the non-exclusive rights, in common, of ingress, egress, and regress by motor vehicle over and upon the Common Areas described in Paragraphs 1(b) (1), (2), (3) and (5) hereof.

(2) (i) Wal-Mart, as grantor hereby, grants and conveys to Pocono Star Properties, as grantee, the non-exclusive right, in common with Wal-Mart's stormwater discharge from Lot No. 3, to discharge stormwater from Lot No. 2 into: (a) the STORMWATER DRAINAGE AREA on Lot No. 3 based upon an 80% impervious (buildings/pavement) cover on Lot No. 2 at a return frequency of twenty-five (25) years; and (b) an eighteen (18") inch

storm water drainage pipe and associated drainage structures at the southeastern corner of Lot No. 2 which extend under a portion of the WAL-MART DRIVE on Lot No. 3, all as more fully depicted on the Subdivision Plan and Land Development Plan subject, however, in each case, to the approval of any governmental authorities and agencies having jurisdiction. All other required stormwater control measures necessary for the development of Lot No. 2 shall be accommodated within the property limits of the PSP Property (exclusive of Lot No. 3) and at the expense of the owner or developer of Lot No. 2.

(ii) Pocono Star Properties, as grantor, hereby grants and conveys to Wal-Mart, as grantee, the right to discharge stormwater from the STORM WATER DRAINAGE AREA onto Lot No. 5 in accordance with the design of Detention Basin No. 1 to be constructed on Lot No. 3 and as approved by the Borough of Mount Pocono.

(b) Limitations on Use. The parties use of the Common Areas shall be under and subject to the following covenants and restrictions:

(1) Customers. Each party shall use reasonable efforts to prevent customers and invitees from parking on or otherwise obstructing the Common Areas.

(2) Employees. Each party shall use reasonable efforts to ensure that employees shall not park on or otherwise obstruct the Common Areas.

(3) General. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

(4) Heavy Truck Traffic. Pocono Star Properties shall use its best reasonable efforts to ensure that WAL-MART DRIVE shall not be used for heavy truck or construction equipment ingress, egress, or regress to Lot Nos. 1 and 4 (except for commercial store vendor deliveries to and from Lot No. 1) which best reasonable efforts shall include, without limitation, setting forth said restrictions in lease and/or deed restrictions with Lot Nos. 1 and 4 tenants and/or transferees, provided, however, in the event Lot No. 1 is developed prior to Lot No. 4 and there is no other means of construction equipment vehicular ingress, egress, and regress to Lot No. 1, then, and under such limited circumstances, the owner or developer of Lot No. 1 may utilize the WAL-MART DRIVE solely for ingress, egress, and regress by construction equipment working only in and upon Lot No. 1 and subject to all of the following conditions and restrictions:

- a. The owner or developer of Lot No. 1 shall execute and deliver to Wal-Mart an indemnification and hold harmless agreement in form satisfactory to Wal-Mart;
- b. The owner or developer of Lot No. 1 shall provide Wal-Mart a Certificate of Insurance and/or original insurance policies with limits of liability and coverage as may be reasonably requested by Wal-Mart;
- c. The owner or developer of Lot No. 1 shall execute and deliver to Wal-Mart an agreement in form and with content satisfactory to Wal-Mart providing for the repair by the owner or developer of Lot No. 1, and at such owner or developer's sole cost and expense, of all damage to WAL-MART DRIVE resulting from any such construction activities. It shall be conclusively presumed that any damage to WAL-MART DRIVE was caused by such construction equipment and there shall be no burden, requirement, or obligation that Wal-Mart prove that said construction equipment actually caused any damage to WAL-MART DRIVE. Any damage to WAL-MART DRIVE shall be promptly repaired to the complete satisfaction of Wal-Mart. Wal-Mart shall have the right to require that said repair obligation be supported by a performance guarantee or performance bond satisfactory to Wal-Mart;

d. Any construction equipment utilizing WAL-MART DRIVE shall do so only during hours specified by Wal-Mart and, in no event, shall such use interfere with, obstruct, or block, in any manner whatsoever, the free flow of vehicular traffic utilizing WAL-MART DRIVE;

e. Wal-Mart may post signs on WAL-MART DRIVE stating "No Heavy Truck Traffic", or similar statement;

f. The owner or developer of Lot No. 1 shall promptly restore, at its sole cost and expense, any Common Area that was unreasonably disturbed or otherwise unreasonably affected by construction activities on Lot No. 1.

Notwithstanding the foregoing, no heavy trucks and/or construction equipment shall utilize WAL-MART DRIVE as a means of ingress, egress, and regress to Lot No. 4. All heavy trucks and construction equipment used in the development and improvement of Lot No. 4 shall be restricted to ingress, egress, and regress from another entrance and driveway at a location on Lot No. 4 accessing S.R. 940 from other than WAL-MART DRIVE.

(5) No Overburden of WAL-MART DRIVE. Pocono Star Properties shall not erect building(s) on Lot No. 4 without first making provision for additional access to and/or from

Pennsylvania S.R. 940, all at Pocono Star Properties sole cost and expense, to preclude overburdening of WAL-MART DRIVE. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, Pocono Star Properties and/or the owner or developer of Lot No. 4 shall not cause a reduction in the level of service (as determined by generally accepted traffic engineering analysis using the Institute of Transportation Engineers data and/or actual vehicle counts) at any of the following without the prior written approval of Wal-Mart:

- a. The WAL-MART DRIVE; or
- b. the OAK STREET and S.R. 940

signalized intersection.

(c) Storm Water Drainage. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities shall be permitted, subject, however, to compliance with all applicable laws and regulations.

(d) No Barriers. Except as necessary for and during the repair, maintenance, and replacement of the Common Areas, neither party shall erect any barriers, fences or other obstructions to the free and unhampered use and benefit of the rights hereinabove set forth, except as expressly permitted by this

Agreement; provided, however, Wal-Mart shall have the unrestricted right to construct fencing around the STORMWATER DRAINAGE AREA. The owner(s) of Lot No. 2 shall have the unrestricted right to extend the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT over Lot No. 2 to the west, at no cost or expense to Wal-Mart and the owner(s) of Lot Nos. 1 and 4 shall have the unrestricted right to extend the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT over Lots Nos. 1 and 4 to the east, at no cost or expense to Wal-Mart, provided, however, that any such extension of the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT shall be subject to the terms, covenants, conditions, and restrictions set forth in this Agreement.

(e) No Implied Easements. Except as provided in this Agreement, there shall be no easements, either express or implied, created by either party in favor of the other.

8. Common Area Development, Maintenance, and Taxes.

(a) Development of Common Areas.

(1) Party Responsible for Construction of Common Areas.

(i) Wal-Mart shall have no obligation to either construct or contribute to the construction cost of any extensions of the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT.

(ii) Wal-Mart shall construct the following improvements as depicted on the Wal-Mart Land Development Plan at its sole cost and expense: (a) the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT on Lot 3 (b) WAL-MART DRIVE, (c) the STORMWATER DRAINAGE AREA, and (d) the portion of the POCONO STAR BOULEVARD RIGHT-OF-WAY at the intersection with Industrial Park Drive to be improved in conjunction with the development of the Wal-Mart Property (the "WAL-MART NORTHERN TRUCK ENTRANCE").

(2) "Parking Area" Ratio. Pocono Star Properties covenants and agrees that at all times following construction of buildings on the Out Parcels: (i) parking ratios shall be maintained on the Out Parcels pursuant to standards set forth in Paragraph 2(c)(8) hereof; and (ii) on Lot No. 4 there shall be independently maintained parking areas sufficient in size to comply with all local ordinances and requirements.

(3) Development Timing. Concurrent with the construction of a building on either the Wal-Mart Property or the PSP Property by either the fee title holder or a leasehold title holder of such property (not an easement title holder) (the "Developing Party"), any Common Areas on the property being developed, as well as the storm water drainage structures for such

Common Areas, shall be developed in accordance with the approved Final Land Development Plan for such property at the expense of such Developing Party. In the event construction on the Wal-Mart Property shall occur prior to development of the lots constituting the PSP Property, then, and in such event, Wal-Mart shall have the right to clear, grade, and seed Lot Nos. 1 and 2 in accordance with the Wal-Mart Land Development Plan at the expense of such Developing Party and, in addition, the Developing Party for Lot No. 3 shall install storm water drainage structures and utility lines on or below Lot No. 3 and to or along the common boundary line of Lot No. 3 with Lot Nos. 1 and 2 in accordance with the Wal-Mart Land Development Plan.

(3.1) Cost for Utility Lines Below Common Areas. Pocono Star Properties shall have the right at its cost and expense and in accordance with good engineering and construction practices and procedures and all necessary utility company and governmental approvals to connect to water, sewer, telephone and electric services, if any, located within the right-of-way of the WAL-MART DRIVEWAY ACCESS AND UTILITY EASEMENT and/or the sanitary sewer and water mains constructed by Wal-Mart adjacent to Lot No.

1 as said sanitary sewer and water mains are set forth on the approved Wal-Mart Land Development Plan.

(4) Grading License. Pocono Star Properties hereby grants and conveys to Wal-Mart a license over portions of Lot Nos. 1, 2 and 4 depicted on the Wal-Mart Land Development Plan including, without limitation, Drawing Nos. S-5, S-8, and S-9 pertaining to Erosion and Sedimentation Control Plans, for the purpose of removing trees, grading and constructing and installing swales and other erosion and sedimentation control measures in such areas in accordance with the Wal-Mart Land Development Plan. Upon completion of such tree removal, grading, and construction Wal-Mart shall seed and landscape the affected areas, at the expense of Wal-Mart, until stabilized. Subject to the approval of all governmental entities, agencies, and authorities having jurisdiction and subject, moreover, to prior notice to and approval by Wal-Mart, Pocono Star Properties shall have the right to modify the grading and erosion and sedimentation control measures constructed by Wal-Mart within the Grading License provided that any such modification is designed and constructed to fully accommodate storm water management and erosion and sedimentation control measures required for the use and enjoyment of the Wal-Mart

property in accordance with law, such modification and redesign to be at the sole cost and expense of Pocono Star Properties.

(b) Allocation of Certain Maintenance Costs Until Development of the PSP Property. In the event the Wal-Mart Property is developed prior to the PSP Property, then, until such time as one or more of the lots constituting the PSP Property is/are developed the parties agree that upon the commencement of operation of a business upon Lot No. 3 (if such commencement is so elected by and/or through the fee title holder of Lot No. 3), the fee title holder of Lot No. 3 (not an easement title holder) shall maintain in good condition and repair: (i) all improvements within the boundary lines of Lot No. 3, including, without limitation, any Common Areas on Lot No. 3; and (ii) the portion of the POCONO STAR BOULEVARD RIGHT-OF-WAY constituting the WAL-MART NORTHERN TRUCK ENTRANCE, provided, however, Wal-Mart's obligation to maintain the WAL-MART NORTHERN TRUCK ENTRANCE shall cease when POCONO STAR BOULEVARD RIGHT-OF-WAY is constructed and/or the owner of Lot No. 4 otherwise uses the POCONO STAR BOULEVARD RIGHT-OF-WAY, whichever event shall first occur, following which the respective fee title holders (not easement title holders) of Lot Nos. 3 and 4 shall pay or cause to be paid the maintenance, repair and replacement

expenses of all improvements within the boundary lines of their respective lots.

(c) Taxes. The fee title owners of all respective lots constituting the Wal-Mart Property and the PSP Property (not easement title holders) shall pay or cause to be paid directly to the appropriate taxing authorities all real property taxes and assessments which are levied against their respective lots.

9. Signs. Pocono Star Properties shall not place any pylon sign, or any other sign, on, in, or over the Common Areas on Lot Nos. 1, 2, and 3, other than monument signs or similar directional signs on the WAL-MART NORTHERN TRUCK ENTRANCE, provided, however: (i) Wal-Mart may at its cost erect a pylon sign or any other signage within any Common Area on the Wal-Mart Property; and (ii) except as set forth above and except with regard to the WAL-MART NORTHERN TRUCK ENTRANCE, nothing contained in this paragraph shall restrict Pocono Star Properties right to place pylon signs or other signage on, in, or over any Common Area on Lot No. 4.

10. Indemnification/Insurance.

(a) Indemnification. Each party hereto hereby indemnifies and saves the other party harmless from any and all

liability, damage, expense, causes of action, duties, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own property, except if caused by the act or negligence of the other party hereto.

(b) **Insurance.**

(1) Wal-Mart for the Wal-Mart Property and Pocono Star Properties for the PSP Property (until such time as a lot forming part of the PSP Property is conveyed or leased to another responsible party who shall thereby assume this obligation) shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than One Million (\$1,000,000.00) Dollars for bodily injury or death of a single person, and to the limit of not less than One Million (\$1,000,000.00) Dollars for any one occurrence, and to the limit of One Hundred Thousand (\$100,000.00) Dollars for property damage. Each party shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by

additional endorsement on any master policy of insurance carried by such party. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to the other party.

(2) At all times during the term of this Agreement, each party shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the Commonwealth of Pennsylvania, with such insurance to be for the full replacement value of the insured improvements.

(3) Policies of insurance provided for in this Paragraph 10 shall name Wal-Mart and Pocono Star Properties as insureds, as their respective interests may appear, and each party hereto shall provide to the other certificates evidencing the fact that such insurance has been obtained and is in force and in effect.

(4) Wal-Mart for itself and its property insurer hereby releases Pocono Star Properties, and Pocono Star Properties for itself and its property insurer hereby releases Wal-Mart from and against any and all claims, demands, liabilities or

obligations whatsoever for damage to each other's property or loss of rents or profits of either Wal-Mart or Pocono Star Properties resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated to carry hereunder, or, if the releasing party is not carrying such insurance, then to the extent such damage or loss would be covered if the releasing party had such insurance in force and effect.

(5) Notwithstanding anything to the contrary contained in this Paragraph 10, so long as the net worth of Wal-Mart exceeds One Hundred Million (\$100,000,000.00) Dollars, and so long as Wal-Mart is the owner or Lessee of Lot No. 3, Wal-Mart shall have the right to retain the financial risk for up to One Million Five Hundred Thousand (\$1,500,000.00) Dollars per claim.

(6) The amounts of insurance and limits of liability for each of the policies hereinabove set forth shall be increased as the parties hereto may reasonably require from time to

time to account for inflation or generally increased insurance settlements or jury verdicts and/or to amounts which are commercially reasonable for similar properties and uses within Northeastern Pennsylvania.

11. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the property of either party hereto, such lien shall be expressly subordinate and inferior to the lien of any first lienholder now or hereafter placed on such property. Except as set forth in the preceding sentence, however, any holder of a first lien on either the Wal-Mart Property or any part of Lot Nos. 1, 2, and/or 4 and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

12. Expansion of Lot Nos. 1, 2, 3, 4 and 5. The parties agree that in the event Lot Nos. 1, 2, 3, 4, or 5 are expanded by ownership, control of the parties, or agreement with a third party, the parties may agree to amend this Agreement to provide that all of the provisions of this Agreement shall apply to the expanded area.

13. Injunctive Relief. Pocono Star Properties agrees that a breach or violation of the provisions of this Agreement by Pocono Star Properties will leave Wal-Mart with an inadequate remedy at law and, therefore, injunctive or other equitable relief shall be available to enforce the covenants set forth in this Agreement, such relief to be available without the necessity of posting a bond, cash, or other security or surety. If any restriction or provision contained in this Agreement is held by any court to be unenforceable or unreasonable, a lesser restriction shall be enforced in its place as determined by such court and any remaining restrictions contained herein shall be enforced independently of such invalid or unreasonable restriction.

14. Eminent Domain. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's property or giving the public or any government any rights in said property. In the event of any exercise of eminent domain or transfer in lieu thereof of all or any part of the Common Areas located on the Wal-

Mart Property, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof.

15. Limitation of Liability. Any person acquiring fee or leasehold title to either the Wal-Mart Property or any lot(s) constituting the PSP Property, or any expansion of either of said properties, shall be bound by this Agreement only as to the lot or portion of the lot acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such lot or portion of the lot, except as to obligations, liabilities, or responsibilities that accrue during said period. Although persons may have limited liability under this paragraph, the easements, covenants, and restrictions in this Agreement and easement shall continue to be a benefit to and a servitude upon said tracts and shall run with the land.

16. Breach. In the event of a breach or threatened breach of this Agreement, only the record owners of the Wal-Mart Property or Lot Nos. 1, 2, 4, or 5, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of Lot No. 3, or Pocono Star Properties so long as it or any affiliate has an

interest as owner or lessee Lot Nos. 1, 2, 4 or 5, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed. Unless otherwise provided in this Agreement, neither party hereto shall be deemed to be in default under this Agreement until such party shall have been given written notice describing the nature of the breach and within fifteen (15) days after the receipt of such notice, or such shorter or longer period of time as otherwise may be provided in this Agreement, shall have failed to commence to cure such breach and to proceed diligently to completing the curing of such breach, utilizing all reasonable means to promptly cure the breach.

17. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender the feminine and neuter.

18. Document Execution, Modification and Cancellation.

It is understood and agreed that until this document is fully executed by both Pocono Star Properties and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. Wal-Mart and Pocono Star Properties waive both the power and the right to make any oral modification or oral cancellation of this Agreement including exhibits annexed hereto or made part hereof. This Agreement including exhibits annexed hereto or made part hereof may be modified or cancelled only by the mutual agreement of Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Lot No 3, and Pocono Star Properties, as long as it or its affiliate has any interest as either owner or lessor of Lot Nos. 1, 2, 4 or 5.

19. Non-Merger. So long as Wal-Mart or its affiliate is owner or lessee of Lot No. 3, this Agreement shall not be subject to the doctrine of merger. So long as Pocono Star Properties or its affiliate is owner or lessee of either Lot Nos. 1, 2, 4, or 5, this Agreement shall not be subject to the doctrine of merger.

20. Duration. Unless otherwise cancelled or terminated, all of the easements granted or referenced in this Agreement shall

continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force or effect after ninety-nine (99) years from the date hereof.

21. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

22. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and they are not liable or bound in any manner whatsoever by express or implied warranties, guarantees, promises, statements, representations, or information made or furnished by any agent, employee, servant, or other person representing or purporting to represent the parties, unless such warranties, guarantees, promises, statements, representations or information are expressly set forth herein.

23. Estoppel Certificates. Each party agrees to provide upon written request, an estoppel certificate, in form acceptable to the party of whom the request is made, provided each party does not request more than one per year.

24. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania.

25. Force Majeure. In the event either party encounters delays in the performance of its obligations hereunder caused by fire or other casualty, floods, the elements or acts of God, then the date for which performance of such obligation is required under this Agreement shall be extended for a period of time equal to the delay, provided the party wishing to extend the date has notified the other party of the delay in writing within ten (10) days following the start of the delay.

26. Notice to Parties. Each notice, demand, request, consent, approval or other communication (all of the foregoing are herein referred to as a "notice") that a party is required to give to the other party shall be in writing and sent by either overnight delivery service, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Pocono Star Properties:

Pocono Star Properties, L.P.
10 Pine Hill Road
Mount Pocono, PA 18344

ATTN: Mr. Arthur Berry

With a copy to:

Jacob E. Seip, Jr., Esquire
P.O. Box 70
Mount Pocono, PA 18344

If to Wal-Mart:

Wal-Mart Real Estate Business Trust
2001 S.E. 10th Street
Bentonville, AR 72712-6489

ATTN: President

With a copy to:

Marc R. Wolfe, Esquire
Newman, Williams, Mishkin,
Corveleyn, Wolfe & Fareri, P.C.
712 Monroe Street, P.O. Box 511
Stroudsburg, PA 18360-0511

Each party shall have the right to designate a different address by notice similarly given. Unless specifically stated to the contrary elsewhere in this Agreement, any notice shall be deemed to have been given, made or communicated, as the case may be, on the date the same is received by the addressee.

27. No Partnership, Joint Venture or Principal Agent Relationship. Nothing contained in this Agreement shall be construed to make the parties principal and agent or partners, or joint venturers, or to render any party liable for the debts or obligations or the other, except as provided in this Agreement, and

no provisions of this Agreement are intended to create or constitute any person a third party beneficiary hereof.

28. Severability. Any provision of this Agreement which may prove unenforceable under any law shall not affect the validity of any other provision hereof.

29. Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of any rights or remedies which the party may have hereunder at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants and conditions.

30. Approvals. If the approval of Pocono Star Properties or Wal-Mart is required under the terms of this Agreement, but such party no longer owns any interest in their respective property, the right of approval shall be exercised by the owner of the fee simple title to the respective property as applicable.

31. Construction of Agreement. Each party hereto acknowledges, represents, and warrants that: (i) it has participated in the negotiation of this Agreement; (ii) no provision of this Agreement shall be construed against or be

interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision; (iii) they have had at all times access to an attorney of their choice in the negotiation of the terms of and in the preparation and execution of this Agreement; (iv) they have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to the execution and delivery thereof; (v) the terms of this Agreement were negotiated at arm's length; (vi) this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind asserted by any of the parties upon the others; and (vii) the execution and delivery of this Agreement is the free and voluntary act of each of the parties hereto.

32. Covenants Running with the Land. The covenants, agreements and grants herein made shall be deemed covenants running with the land and shall bind and inure to the benefit of Wal-Mart and Pocono Star Properties and their respective heirs, executors, administrators, successors and assigns.

33. Dedication. Nothing contained herein shall be used or construed as a grant of any rights to any public or governmental authority or agency.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

WITNESS:

POCONO STAR PROPERTIES,
a Pennsylvania Limited Partnership,
by and through its sole General
Partner, Pocono Star Properties, Inc.

Jacob E Seip
JACOB E SEIP, Asst Sec
(CORPORATE SEAL)

By: Bruce C Berry
Bruce C. Berry, President

ATTEST:

WAL-MART REAL ESTATE BUSINESS TRUST,
a Delaware Business Trust

(Asst.) Secretary
(CORPORATE SEAL)

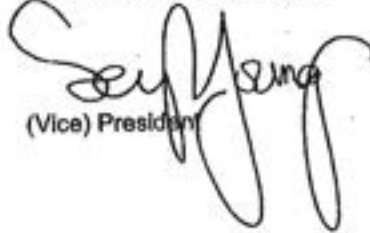
By: _____
(Vice) President

(CORPORATE SEAL)

ATTEST:
TRUST,


By:
(Asst.) Secretary
(CORPORATE SEAL)

WAL-MART REAL ESTATE BUSINESS TRUST
a Delaware Business Trust


(Vice) President


Approved as to legal terms only
By 
WAL-MART LEGAL TEAM
Date 5/6/99

EXHIBIT "A"

ALL THAT CERTAIN piece, parcel or plot of land situate in the Borough of Mount Pocono, County of Monroe and Commonwealth of Pennsylvania, bounded and described as follows, to-wit:

BEGINNING at a corner in the northeasterly right-of-way line of Industrial Park Drive, at a corner common to lots 2 and 3 of the Arthur Berry, Jr. and Bruce Berry Subdivision, last revised July 31, 1998 as prepared by Michael J. Pasonick, Jr., Inc. and intended to be recorded in the Office for the Recording of Deeds, etc., at Stroudsburg, Pennsylvania, in and for the County of Monroe, immediately prior to the recordation of this deed.

THENCE along the northeasterly right-of-way line of Industrial Park Drive North 23 Degrees, 27 Minutes, 36 Seconds, West 222.29 Feet to existing monument corner;

THENCE continuing along the northeasterly right-of-way line of Industrial Park Drive 225.74 Feet along the arc of a 1030 Foot radius curve to the left to a corner;

THENCE along the southerly right-of-way line of Pocono Star Boulevard the following four (4) courses and distances:

1. 81.96 Feet along the arc of a 50 foot radius curve to the right to a corner;
2. North 57 Degrees, 53 Minutes, 54 Seconds East 769.82 Feet to a corner;
3. 32.13 Feet along the arc of a 350.00 Foot radius curve to the right to a corner;
4. North 63 Degrees, 09 Minutes, 30 Seconds East 241.63 Feet to a corner in line of Lot 4.

THENCE along Lot 4 South 32 Degrees, 06 Minutes, 25 Seconds East 272.97 Feet to corner;

THENCE continuing along Lot 4, South 26 Degrees, 50 Minutes, 30 Seconds East 474.09 Feet to a corner common to Lot 1;

THENCE along Lot 1 the following six (6) courses and distances:

1. South 57 Degrees, 53 Minutes, 35 Seconds West 247.93 Feet to a corner;
2. 74.01 Feet along the arc of a 345.67 Foot radius curve to right to a corner;
3. South 70 Degrees, 09 Minutes, 38 Seconds West 36.67 Feet to a corner;
4. South 19 Degrees, 50 Minutes, 22 Seconds East 50.00 Feet to a corner;
5. South 28 Degrees, 38 Minutes, 20 Seconds East 127.01 Feet to a corner;
6. 63.87 Feet along the arc of 50 Foot radius curve to the left to a corner in the northerly right-of-way line of Pennsylvania State Route 0940;

THENCE along the northerly right-of-way 271.07 Feet along the arc of a 3879.83 Foot radius curve to the left to a corner common to Lot 2;



BK 2063PG 5590

THENCE along Lot 2 the following eight (8) courses and distances:

1. 69.73 Feet along the arc of a 50 Foot radius curve to the left to a corner;
2. North 05 Degrees, 44 Minutes, 24 Seconds West 104.46 Feet to a corner;
3. South 70 Degrees, 09 Minutes, 38 Seconds West 33.11 Feet to a corner,
4. 111.62 Feet along the arc of a 370.67 Foot radius curve to the right to a corner;
5. South 87 Degrees, 24 Minutes, 49 Seconds West 245.62 Feet to a corner;
6. 71.15 Feet along the arc of a 329.39 Foot radius curve to the left to a corner;
7. 78.84 Feet along the arc of a 62.00 Foot radius curve to the right to a corner;
8. South 66 Degrees, 32 Minutes, 24 Seconds, West 139.22 Feet to the place of beginning.

CONTAINING 790,279.41 Square Feet or 18.14 acres of land.

BEING all of Lot 3 on the Subdivision Plan of Arthur Berry, Jr. and Bruce Berry last dated July 31, 1998 as prepared by Michael J. Pasonick, Jr., Inc. and intended to be recorded, as aforesaid.

TOGETHER with and subject to a 10 Foot wide Drainage Easement "C" as shown on said Subdivision Plan of Arthur Berry, Jr. and Bruce Berry last dated July 31, 1998 as prepared by Michael J. Pasonick, Jr., Inc. and intended to be recorded, as aforesaid.

TOGETHER with and subject to a Driveway Access and Utility Easement as shown on said Subdivision Plan of Arthur Berry, Jr., and Bruce Berry, last dated July 31, 1998 as prepared by Michael J. Pasonick, Jr., Inc. containing 1.304 acres of land and intended to be recorded, as aforesaid.

TOGETHER with and subject to a Traffic Signal Easement as shown on said Subdivision Plan of Arthur Berry, Jr. and Bruce Berry last dated July 31, 1998 as prepared by Michael J. Pasonick, Jr., Inc. containing 14,559.50 Square Feet or 0.33 acres of land and intended to be recorded, as aforesaid.

TOGETHER with and subject to a 10 Foot wide Utility Easement beginning on the northerly right-of-way line of PA State Route 0940 and thence along the easterly side line of Lots 1 and 3 to the southerly right-of-way line of Pocono Star Boulevard, the Terminus of this Easement.

UNDER AND SUBJECT to that certain Easements With Covenants and Restrictions Affecting Land ("ECR") of even date herewith by and between Grantor and Grantee which is intended to be recorded in the aforesaid Recorder's Office immediately after recordation of this deed.

TOGETHER with all the reversionary rights of the Grantors in and to the above described premises including, without limitation, all reversionary rights in and to the above described premises as conveyed to the Grantor by Deed of Mount Pocono High Point Inn, Inc., and George Colovos, successor in interest to Mount Pocono High Point Inn, Inc., to Pocono Star Properties, L.P., dated June 23, 1995, and recorded in the Office for the Recording of Deeds, etc., at Stroudsburg,

BK2063P65591



Pennsylvania, in and for the County of Monroe, in Record Book Volume 2013, page 1362..

BEING PART OF THE SAME PREMISES which Arthur Berry, Jr. and Bruce C. Berry, by their deed dated June 1, 1995 and recorded June 13, 1995 in the aforesaid Recorder's Office in Record Book Volume 2009, Page 1429 granted and conveyed unto Pocono Star Properties, L.P., Grantor hereof, in fee.



BK2063PG5592

STATE OF PENNSYLVANIA :
 :
 : ss
COUNTY OF MONROE :

On this, the 5th day of May, 1999, before me, a Notary Public in and for said County and State, the undersigned officer, personally appeared BRUCE C. BERRY, who acknowledged himself to be the President of POCONO STAR PROPERTIES, INC., which is the sole General Partner of Pocono Star Properties, a Pennsylvania Limited Partnership and that he as such President, being authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the corporation by himself as President.

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

Rosemary A. Getz

NOTARIAL SEAL
ROSEMARY A. GETZ, NOTARY PUBLIC
STROUDSBURG, MONROE CO., PA.
MY COMMISSION EXPIRES SEPT 29, 2000

BK2063P05593

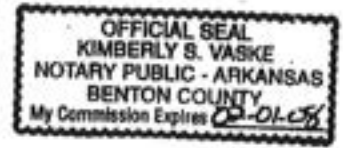
STATE OF ARKANSAS
COUNTY OF

ss

On this, the 7th day of May, 1999, before me, a Notary Public in and for said County and State, the undersigned officer, personally appeared Ray Young, who acknowledged himself to be the (Vice) President of **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware business trust, and that he as such (Vice) President, being authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the corporation by himself as (Vice) President.

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

Kimberly S. Vaske



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

Dennis W. Dushler



Brodhead Watershed Association

PO Box 339 • Henryville, PA 18332
570-839-1120 info@brodheadwatershed.org
www.brodheadwatershed.org

Officers

Annette Atkinson
President
Adam Mosher
Vice President
Jennifer Shukaitis
Secretary
Craig Todd
Treasurer

Executive Director

Alex Jackson
Tunkhannock Twp.

Board of Directors

Annette Atkinson
Middle Smithfield Twp.
Donald Baylor
Hamilton Twp.
Damaris Bonilla-Rodriguez
Lehman Twp.
Mark Chehi
Riegelsville
Brittney Coleman
Stroud Twp.
Matt Diger
Barrett Twp.
Michelle Farley
Paradise Twp.
Catherine Folio
Chesnut Hill Twp.
Paula Heeschen
Stroudsburg
W. Michael Johnson
Narberth
Robert Lovenheim
Smithfield Twp.
Joe Memoli
Middle Smithfield Twp.
Don Miller
Paradise Twp.
Genevieve Martineil
East Stroudsburg
Adam Mosher
Price Twp.
Michael Penn
Mt. Pocono
Stuart Poppel
Barret Twp.
Tarah Probst
Stroudsburg
Barb Roberts
Barrett Twp.
Emily Rollinson
East Stroudsburg
Jennifer Shukaitis
Stroud Twp.
Darryl Speicher
Barrett Twp.
Edie Stevens
Paradise Twp.
Craig Todd
East Stroudsburg

August 10, 2023

Mount Pocono Borough
Attn: Borough Council
1361 Pocono Blvd #100
Mt Pocono, PA 18344

RECEIVED
AUG 14 2023
MT. POCONO BOROUGH

RECEIVED
AUG 14 2023

BY: 

Dear Mount Pocono Borough Council,

It is more important than ever to become a municipal Conservation Partner of the Brodhead Watershed Association (BWA). Municipal support allows BWA to continue to work throughout the community to fulfill our clean water mission through educational and scientific programming.

Joining the Brodhead Watershed Association in the coming fiscal year will ensure that our water quality monitoring efforts continue - at almost 100 sites and across 17 townships throughout the Brodhead watershed. In addition, municipal support helps sustain our educational programming, community engagement and collaboration, as well as municipal technical assistance.

Since our founding in 1989, the Brodhead Watershed Association has dedicated its mission to assure clean and abundant water throughout the Brodhead and Cherry Creek regions. Through the years, BWA has worked to develop educational programs and opportunities to learn about and understand the importance of clean water and the factors that threaten it. We invite you to join leading municipalities in Monroe County in safeguarding a clean water future in the Brodhead Watershed.

Caring for clean water is the surest way to protect not only our community health, but our local economy as well, working together to conserve pure water and world class outdoor recreation for generations to come. We look forward to recognizing your municipal Conservation Partnership at our events throughout the year, on our webpage, and in our Annual Report to the community.

BWA would love to attend an upcoming work session to provide more information about BWA's efforts and outreach in the community or answer any questions the Borough may have. Thank you for your consideration in helping us to continue this work and uphold our mission.

Sincerely,

Stephanie Uhranowsky

Stephanie Uhranowsky,
BWA, Admin & Communications Specialist

Would you consider joining BWA as a River Steward partner this year?

Brodhead Watershed Association is a 501(c)(3) non-profit organization. All donations are tax-deductible.

think globally, act locally



2022-Powell's Sales and Service, Inc.

Scott Township, PA 18411

Phone # (570) 587-2743
 Fax # (570) 586-6553

Estimate

Date	Estimate #
8/7/2023	33721

Name / Address
Mount Pocono Borough 1361 Pocono Boulevard Suite 100 Mount Pocono, PA 18344

Customer Fax No. = 570-839-0981

Rep	Project
MS	

Item	Description	Qty	Cost	Total
COSTARS	Pricing As Per COSTARS 25 - Municipal Work Vehicles Powell's Contract # - COSTARS 025-090 Powell's State Vendor # 136442			0.00T
18SBL	Magnum Headache Rack, 18" Service Body Rack with Lights	1	829.00	829.00T
COMMANDER	strobe oval in place of back up light, back up light now in STT oval. in Magnum rack	1	99.00	99.00T
8893148	48 Inch Amber/Clear LED Light Bar With Wireless Controller	1	854.85	854.85T
ECCO E92006	ECCO LED Square Worklamp as alley lights mounted on magnum rack	2	54.42	108.84T
8894142	42 INCH LED TRAFFIC ADVISOR/STROBE/FLOOD LIGHT to be mounted in magnum rack.	1	887.63	887.63T
6391207	SIX SWITCH PANEL FOR DIRECTIONAL WARNING LIGHTS	1	94.42	94.42T
530	Back Up Alarm, 102DBA, 12-24VDC	1	125.00	125.00T
ED3704AC	ECCO Surface Mount Led Strobe Light -4 LED AMBER/ CLEAR Grill mount	4	71.34	285.36T
Ecco 9014A	tow hook mount area	2	91.00	182.00T
ED9040AW	Hide-A-LED™ Concealed Warning AMBER/WHITE REAR bumper angles	2	86.74	173.48T
ED3704AC	ECCO Surface Mount Led Strobe Light -4 LED AMBER/ CLEAR REAR BUMPER FLAT	2	71.34	142.68T
ED3705AC	ECCO Surface Mount LED Strobe -6 LED AMBER/ CLEAR TOP EDGE UTILITY BODY	2	90.61	181.22T
1492238	Buyers Products 6 Inch Wide LED Scene Light is ideal for first responders and rescue vehicles like fire trucks and ambulances. The 45 degree angled fixture with 20 in. blunt-cut leads is easy to install on any flat surface. It casts a bright 2296 lumens of light across a wide area.	2	53.61	107.22T
Shop Supplies	6 Inch Wide LED Scene Light - Rectangular Lens. REAR UTILITY BODY Small quantity parts to complete job, wire, loom, fuse kits etc. , environmental supplies		91.00	91.00T
Labor - Shop	Labor - Shop	16	125.00	2,000.00T

NOTE: 6% SALES TAX and 12% FET Tax MAY APPLY to pricing listed above.

Total

Web Site www.powellsequip.com

Customer Signature

ALL WARRANTY OR REPAIR WORK DONE AT ANY PLACE OTHER THAN POWELL'S WILL BE THE RESPONSIBILITY OF THE OWNER. We propose to furnish materials and labor as listed above. All quoted material is guaranteed to be as specified. Any alteration or deviation from the above specifications will be executed only upon written orders and will become an EXTRA CHARGE.
 QUOTES VALID FOR 30 DAYS.



2022-Powell's Sales and Service, Inc.
 Scott Township, PA 18411

Estimate

Phone # (570) 587-2743
 Fax # (570) 586-6553

Date	Estimate #
8/7/2023	33721

Name / Address
Mount Pocono Borough 1361 Pocono Boulevard Suite 100 Mount Pocono, PA 18344

Customer Fax No. = 570-839-0981

Rep	Project
MS	

Item	Description	Qty	Cost	Total
bed liner98	spray on bed liner under the rail 98" utility beds *****add \$ 150 for over the rail option*****	1	1,050.00	1,050.00T
Labor - Shop	Labor - Shop remove and repair damaged front of utility body center where the welds broke due to sliding object. RoadCrew@MountPocono-PA.gov emailed 8/15/23 1047am MS	12	125.00	1,500.00T
			0.00%	0.00

NOTE: 6% SALES TAX and 12% FET Tax MAY APPLY to pricing listed above.

Total \$8,711.70

Web Site www.powellsequip.com

Customer Signature _____

ALL WARRANTY OR REPAIR WORK DONE AT ANY PLACE OTHER THAN POWELL'S WILL BE THE RESPONSIBILITY OF THE OWNER. We propose to furnish materials and labor as listed above. All quoted material is guaranteed to be as specified. Any alteration or deviation from the above specifications will be executed only upon written orders and will become an EXTRA CHARGE.
 QUOTES VALID FOR 30 DAYS.



WORK AUTHORIZATION

Company: MOUNT POCONO BOROUGH
Phone: _____
Attention: JIM
Date: 8/8/23

Requesting authorization for the following repairs:

Remove and replace 8 pins and bushings for the loader bucket and bucket linkage. Remove and replace rotten hydraulic tubes and hydraulic lines for the loader lift and bucket circuit. Remove and replace brake lines that are leaking, also ride control lines that are rusted. Remove and replace auxiliary tubes that are rusted. Remove and replace quick coupler lines that are rusted. Remove and replace 10 pilot lines that are rusted. Remove and replace front break tube that is rotted. Remove and replace front cutting edge.

Parts	<u>\$19,347.78</u>
Labor	<u>\$12,432.00</u>
Current Charges	<u>\$1,271.75</u>
Shop Supplies	<u>\$500.00</u>
TOTAL	<u>\$33,551.29</u>

Note: This is an estimate, not a quote. Price does not include tax or freight charges. Authorized signature will be considered contract for repairs. Repairs will not commence until a signed work authorization is received.

Authorized Signature: _____

Print Name: _____

Date: _____

For questions regarding this estimate, please contact us:

Michael Strohl - Stroudsburg Branch Manager

(570) 420-0877

mstrohl@medicoce.com

ORIGINAL
Quote



Medico

CONSTRUCTION EQUIPMENT ^{INC}

WORK AUTHORIZATION

Company Name: Mount Pocono Borough
Phone / Fax: _____
Attention: Jim

Requesting Authorization for the following repairs:

Remove and replace 4 loader bucket pins and bushings, 1 lift cylinder pin and bushing. Remove and replace 2 lower dog bone pins and bushings. On a Case 621E XT loader.

Parts	\$ 4,800.00
Labor	\$ 3,264.00
Current charges	
Misc Shop Supplies	\$ 600.00
Total	\$ 8,664.00

Please Note:

- * This is an estimate and NOT a quote.
- * Price does not include tax or shipping charges
- * Authorized Signature will be considered contract for repairs
- * Repairs will not commence until a signed Authorization is received via fax or email

Authorized Signature: _____

Date: _____

Print Authorizing Signature: _____

Any questions regarding this estimate, please contact me.

Michael Strohl - Branch Manager

P: 570-420-0877

E: mstrohl@medicoce.com

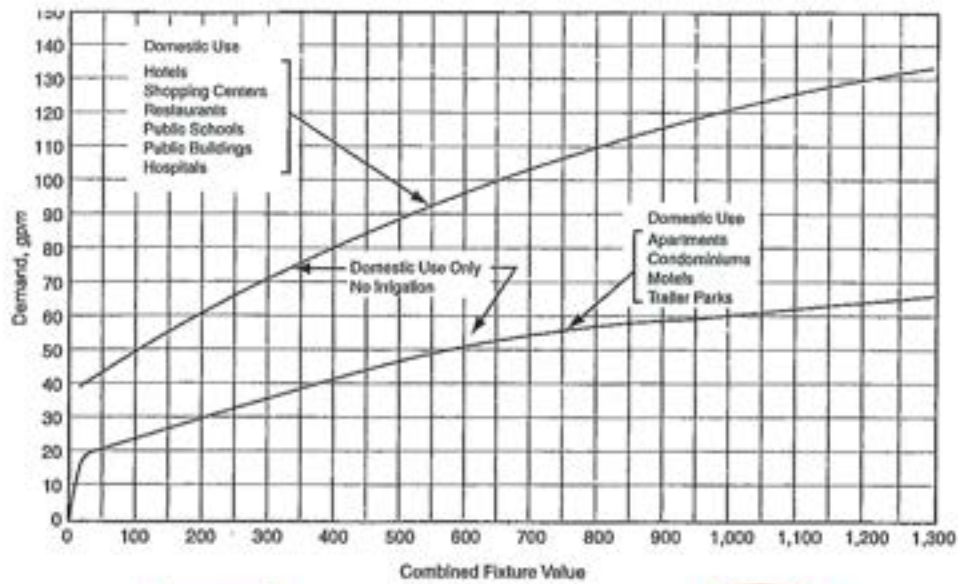


Figure 4-2 Water flow demand per fixture value - low range

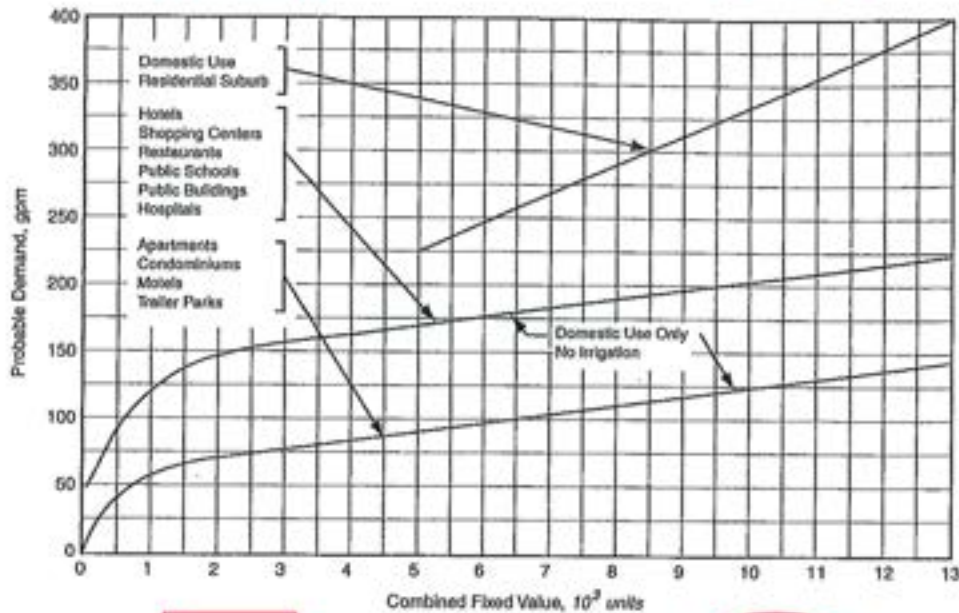


Figure 4-3 Water flow demand per fixture value - high range

Table 4-1 Pressure adjustment factors*

Working Pressure at Meter Discharge (psi)	Average Flow from 50 ft of 5/8-in. Hose and Sprinkler (gpm)	Pressure Adjustment Factor
35	6.7	0.74
40	7.2	0.80
50	8.1	0.90
60	9.0	1.00
70	9.8	1.09
80	10.5	1.17
90	11.2	1.25
100	12.1	1.34

*derived from Table 4-1 and 4-2 of Manual M22 (1975).

Procedure for Estimating Total Customer Peak Demand

- 1.) Determine the Combined Fixture Value (CFV) by:
 - a. Determine the number and type of fixtures and record on the WCDS
 - b. Multiply the number of each type of fixture times the given fixture value to obtain the CVF Total
- 2.) From Figure 4.2 or 4.3, determine the probable customer peak water demand in gpm at 60 psi.
Note: Fig. 4-2 is for CFVs in the low range (0 to 1,300) and Fig. 4-3 is for CFVs in a higher range (up to 13,000).
- 3.) If the service pressure is greater or less than 60 psi, adjust the probable peak flow by multiplying by the appropriate factor from Table 4-1.
- 4.) Irrigation Demand:
 - a. Determine: Area of irrigable surface and type/capacity of irrigation system.
 - b. Multiply the sections ($100 \text{ ft}^2 = 1 \text{ Section}$) times irrigation system coefficient on WCDS (1.16 or 0.40)
 - c. Add any additional irrigation supplied via hose bib(s).
- 5.) Fire Flow Demand
 - a. Determine any required fire flow demand load (i.e. sprinklers)
- 6.) Continuous Load Demand
 - a. Determine any continuous fixed loads (i.e. process water, cooling water, etc.)
- 7.) Total customer peak demand can now be determined by adding the following:
 - a. Domestic Demand + Irrigation Demand + Fire Flow + Continuous Load Demand
- 8.) Size service line and meter accordingly.

WATER SERVICE APPLICATION

Please complete Property, Applicant and Signature boxes below to apply for water service.
Thank you for the opportunity to be your waer service provider.

PROPERTY TO BE SERVED	House #	Street Prefix	Street Name and Suffix		
	Municipality	Apt/Lot #	City	State	Zip
	Sewage Authority	Type of Service: <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Other Type of Heat: <input type="checkbox"/> Hot Water <input type="checkbox"/> Forced Air <input type="checkbox"/> Other			

APPLICANT'S INFORMATION	Name (first, middle, last)	Phone#	Cell#
	Name (first, middle, last)	Phone#	Cell#
	Mailing Address (if different than service address listed above)	Email Address	

I/(We), the applicant(s) for water service from Pennsylvania American Water have read and understood the above application.
I/(We) will be jointly and severally bound by this application to pay and one-time fee of \$30 to cover the cost of setting up (my) (our) account which will be added to your first bill. DO NOT SEND CHECK WITH THIS APPLICATION.

PLEASE READ ABOVE STATEMENTS BEFORE SIGNING.

SIGNATURES	Applicant for Service	Applicant for Service
	x	x
	Date	Date

FOR OFFICE USE ONLY

Premise No.		NSI Account No.		PWS ID	
Usage Data	Work Zone	AW Area	District Code	Crew	Work Order
Service Tap Date	Tap Size	Service Size	Type of Service: <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Other		
Meter Route	Meter Stop	Meter Number		Meter Size	# Dials
Meter Set Date		Meter Set Reading		Meter Location	
Meter Read Instructions					
Additional Notes					
Rate Code	Sewage Code	Distribution Zone		Engineering Area	

Copy to: Dispatch Call Center Work Order File _____ _____



September 1, 2023

Mount Pocono Borough Council
c/o Marissa Duffy, Borough Manager
1361 Pocono Boulevard, Suite 100
Mount Pocono, PA 18344

Re: Security Release for Required Improvements #1
Preliminary / Final Land Development Plan
Clarius Park I-380
CP MT Pocono, LLC – c/o Newland Capital Group
Mount Pocono Borough, Monroe County, PA

Dear Council Members:

The applicant has requested a release of funds for completed work. As requested, Reilly Associates has reviewed the original security amounts in light of completed work.

Reilly Associates performed site reviews to confirm completed work as of August 21, 2023. Utilizing the established schedule of values included in the Development Agreement, we agree that a portion of the security may be released for completed improvements.

During the review of the financial security, an error was discovered in Exhibit "B" List of Improvements and Financial Security Amounts of the Development Agreement. The price for the Type C Inlets in the Pocono Star Boulevard & Industrial Park Drive Improvements section, which amounts to \$63,000.00, was not included in the Pocono Star Boulevard & Industrial Park Drive Improvements Subtotal and as such was not included in the Performance Guarantee. As no amount for the Type C Inlets was posted for the Performance Guarantee, we recommend the item not be included for any financial release requests and be tracked separately in order to ensure the work for the item has been completed.

Snyder Secary & Associates has provided a revised release request for \$3,192,060.00, which excludes the Type C Inlets in the Pocono Star Boulevard & Industrial Park Drive Improvements section.



Based on field inspections of the completed work, Reilly Associates recommends a release of \$2,781,860.00 (two million, seven hundred eighty-one thousand, eight hundred sixty dollars) of the retained security. This does not include the construction contingency for work that is recommended for this release as it is too early in the project to determine if the installed items will function as intended.

We recommend a sum of \$12,209,340.00 (twelve million, two hundred nine thousand, three hundred forty dollars) be held in the Letter of Credit for cost of improvements yet to be completed for the above-mentioned project.

The following is a summary of the financial security status at this time:

Current amount of security:

Original Security Amount	\$	14,991,200.00
Previously Released Amount	\$	0.00
Current Financial Security	\$	14,991,200.00

Established value of security to remain:

Value of work and contingency	\$	14,991,200.00
Less value of completed work	\$	2,781,860.00
Required amount of security to remain	\$	12,209,340.00

Amount of recommended release: \$ 2,781,860.00

Please refer to the attachments for a further cost breakdown of construction.

If you have any questions or concerns regarding this review, please contact our office.

Sincerely,

REILLY ASSOCIATES

Kenneth Carey

CPM/KC/DC

W:\2023\09\09 Mount Pocono Borough - AK, Engineer\190316-01 - Chula Park 1-100 - 04041416 A CPM/Financial Security/Financial Release Request #7280 1 - 2023-09-01\2023 09 06 Release 1.docx

Attachments

CC: Marissa Duffy, Borough Manager, Mount Pocono Borough
Matthew Frank, Newland Capital Group
Rocio Budetta, Newland Capital Group
Joshua D. Hoffman, P.E., Senior Engineer, Snyder Secary & Associates
File

LAW OFFICES
BROUGHAL & DeVITO, L.L.P.

38 WEST MARKET STREET
BETHLEHEM, PENNSYLVANIA 18018-5703

JAMES L. BROUGHAL
LEO V. DeVITO, JR.
JOHN S. HARRISON
JAMES F. PRESTON*
LISA A. PEREIRA*
ERIKA A. FARKAS
ANTHONY GIOVANNINI, JR.

*ALSO MEMBER NEW JERSEY BAR

TELEPHONE
(610) 865-3664
FAX
(610) 865-0969
E-MAIL
lawyers@broughal-devito.com
WEBSITE
www.broughal-devito.com

August 21, 2023

VIA FEDERAL EXPRESS

Marissa Duffy
Mount Pocono Borough Manager
1361 Pocono Blvd.
Suite 100
Mount Pocono, PA 18344

RECEIVED
AUG 21 2023
MT. POCONO BOROUGH

Re: Pocono 940 Realty LLC – Parcel I.D. No. 10.93343

Dear Ms. Duffy:

Enclosed please find the Borough of Mount Pocono Standard Stormwater Facilities Maintenance and Monitoring for Privately Owned Stormwater Facilities Agreement executed by the current property owner, Pocono 940 Realty LLC. I would greatly appreciate it if you could send me a copy of the fully-executed agreement once has been countersigned by the Borough.

Thank you for your assistance in this matter.

Very truly yours,

Lisa A. Pereira

Enclosure

cc: Charles Niclaus (via electronic mail)

Rt. 940 and Walmart Access Drive
Parcel I.D. No. 10.93343

RECEIVED

AUG 22 2023

MT. POCONO BOROUGH

**BOROUGH OF MOUNT POCONO
STANDARD STORMWATER FACILITIES MAINTENANCE AND
MONITORING FOR PRIVATELY OWNED
STORMWATER FACILITIES AGREEMENT**

THIS AGREEMENT, made and entered into this 7th day of August, 2023, by and between,

POCONO 940 REALTY LLC, a Pennsylvania limited liability company, having an address at 1430 Broadway, Suite 903, New York, NY 10018 (hereinafter the "Landowner"),

AND

BOROUGH OF MOUNT POCONO, MONROE COUNTY, PENNSYLVANIA, having an address at 361 Pocono Boulevard, Suite 100, Mount Pocono, Pennsylvania 18344 (hereinafter the "Municipality").

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property as recorded by deed in the land records of Monroe County, Pennsylvania, Deed Book 2591 at Page 618 (hereinafter "Property");

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the Subdivision/Land Development Plan (hereinafter "Plan") for Posh Properties Proposed Commercial Development, which is expressly made a part hereof, as approved or to be approved by the Municipality, provides for detention or retention of stormwater within the confines of the Property; and

WHEREAS, the Municipality and the Landowner, its successors and assigns agree that the health, safety, and welfare of the residents of the Municipality require that on-site stormwater management facilities be constructed and maintained on the Property; and

WHEREAS, the Municipality requires, through the implementation of the Brodhead and Tobyhanna Watershed Stormwater Management Plan, that stormwater management

facilities as shown on the Plan be constructed and adequately maintained by the Landowner, its successors and assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site stormwater management facilities shall be constructed by the Landowner, its successors and assigns, in accordance with the terms, conditions and specifications identified in the Plan.
2. The Landowner, its successors and assigns, shall maintain the stormwater management facilities in good and working condition, acceptable to the Municipality so that they are performing their design functions.
3. The Landowner, its successors and assigns, hereby grants permission to the Municipality, its authorized agents and employees, upon presentation of proper identification, to enter upon the Property at reasonable times, and to inspect the stormwater management facilities whenever the Municipality deems necessary. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structures, pond areas, access roads, etc. When inspections are conducted, the Municipality shall give the Landowner, its successors and assigns, copies of the inspection report with findings and evaluations. At a minimum, maintenance inspections may be performed in accordance with the following schedule:
 - Annually for the first 5 years after the construction of the stormwater facilities;
 - Once every 2 years thereafter; or
 - During or immediately upon the cessation of a 50 year or greater precipitation event.

If there are any deficiencies, the Municipality shall notify the Landowner by written notification within 30 days to correct said deficiencies.

4. All reasonable costs for said inspections shall be borne by the Landowner and payable to the Municipality.
5. The Landowner shall convey to the Municipality easements and/or rights-of-way to assure access for periodic inspections by the Municipality and maintenance, when required.
6. The Landowner, its successors and assigns, will perform maintenance in accordance with the maintenance schedule for the stormwater management facilities including sediment removal as outlined on the approved schedule and/or the Plan.

7. In the event the Landowner, its successors and assigns, fail to maintain the stormwater management facilities in good working condition acceptable to the Municipality, the Municipality may enter upon the Property and take such necessary and prudent action to maintain said stormwater management facilities and to charge the costs of the maintenance and/or repairs to the Landowner, its successors and assigns. This provision shall not be construed as to allow the Municipality to erect any structure of a permanent nature on the Property, outside of any easement belonging to the Municipality. It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.
8. In the event the Municipality, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work or labor, use of equipment, supplies, materials, and the like on account of the Landowner's or its successors' and assigns' failure to perform such work, the Landowner, its successors and assigns, shall reimburse the Municipality upon demand, within thirty (30) days of receipt of invoice thereof, for all costs incurred by the Municipality hereunder. If not paid within said 30-day period, the Municipality may enter a lien against the Property in the amount of such costs, or may proceed to recover its costs through proceedings in equity or at law.
9. The Landowner, its successors and assigns, shall indemnify the Municipality and its agents and employees against any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the Municipality for the construction, presence, existence or maintenance of the stormwater management facilities by the Landowner, its successors and assigns.
10. In the event a claim is asserted against the Municipality, its agents or employees, the Municipality shall promptly notify the Landowner, its successors and assigns, and they shall defend, at their own expense, any suit based on such claim. If any judgment or claims against the Municipality, its agents or employees shall be allowed, the Landowner, its successors and assigns shall pay all judgments, costs and expenses in connection therewith.
11. In the event of an emergency or the occurrence of special or unusual circumstances or situations, the Municipality may enter the Property, if the Landowner is not immediately available, without notification or identification, to inspect and perform necessary maintenance and repairs, if needed, when the health, safety or welfare of the citizens is at jeopardy. However, the Municipality shall notify the Landowner of any inspection, maintenance, or repair undertaken within ten (10) days of the activity. The Landowner shall reimburse the Municipality for its costs within thirty (30) days.

This Agreement shall be recorded among the land records of Monroe County, Pennsylvania and shall constitute a covenant running with the Land and/or equitable servitude,

and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interest, in perpetuity.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this _____ day of _____, 2023.

ATTEST:

Landowner:

**POCONO 940 REALTY LLC,
a Pennsylvania limited liability company**

By: Deborah Kane
Print Name: Deborah Kane
Title: Witness

By: Michael Kane
Print Name: Michael Kane
Title: Member

ATTEST:

Municipality:

BOROUGH OF MOUNT POCONO

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

STATE OF New York)
)
COUNTY OF New York) ss.

On this, the 7th day of August, 2023, before me, the undersigned officer, personally appeared Michael Kszal, who acknowledged himself/herself to be the Member of Pocono 940 Realty LLC, and that he/she as such member, being authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of Pocono 940 Realty LLC by himself/herself as member.

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

Mark Nagel
Notary Public

Mark Nagel
Notary Public, State of New York
No. 01NA6258056
Qualified in Kings County 2023
Commission Expires March 19, 2026

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF _____) ss.

On this, the ____ day of _____, 2023, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of the _____ of the Borough of Mount Pocono, and that he/she as such _____, being authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of the Borough of Mount Pocono by himself/herself as _____.

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

Notary Public

Sent Via E-mail

August 11, 2023

Mount Pocono Borough Council
c/o Ms. Marissa Duffy, Manager
1361 Pocono Boulevard, Suite 100
Mount Pocono, PA 18344

Re: Release of Financial Security
Preliminary / Final Land Development Plan
Clarius Park I-380
CP MT Pocono, LLC – c/o Newland Capital Group
Mount Pocono Borough, Monroe County, PA

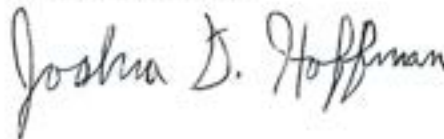
Dear Council Members:

With reference to the above project and on behalf of the owner, we are requesting a partial release of the balance of financial security being held in the amount of \$14,991,200.00 as a portion of the improvements have now been installed. Enclosed is an itemized cost estimate identifying the remaining items to be constructed. We are requesting that the total amount be reduced to \$11,799,140.00.

Please have your Engineer schedule an inspection of the constructed improvements and place this matter on the agenda of the next available meeting for action.

If you have any interim comments or questions or require any further information in this regard, please feel free to contact me. Thank you.

Sincerely,
SNYDER SECARY & ASSOCIATES
A DIVISION OF PENNONI



Joshua D. Hoffman, P.E.
Senior Engineer

cc: Mr. Christopher P. McDermott, P.E., Reilly Associates (w/Encl., Via E-mail)
Mr. Matthew Frank, Newland Capital Group (w/Encl., Via E-mail)
Ms. Rocio Budetta, Newland Capital Group (w/Encl., Via E-mail)
File

CONSTRUCTION COST ESTIMATE FOR FINANCIAL SECURITY						
CLARIUS PARK I-80 FOR CP MT POCONO, LLC						
MOUNT POCONO BOROUGH, MONROE COUNTY, PENNSYLVANIA						
ITEM DESCRIPTION	QTY.	UNITS	PRICE	EXL.	% Complete	Remaining Balance
STORM DRAINAGE						
INLETS						
TYPE C INLET	27	EA.	\$ 3,000.00	\$ 81,000.00	50%	\$ 40,500.00
TYPE M INLET	4	EA.	\$ 3,000.00	\$ 12,000.00	100%	\$ -
TYPE 4 BOX AND INLET	13	EA.	\$ 4,100.00	\$ 53,300.00	50%	\$ 26,650.00
TYPE 5 BOX AND INLET	3	EA.	\$ 5,100.00	\$ 25,500.00	50%	\$ 12,750.00
TYPE 6 BOX AND INLET	4	EA.	\$ 9,500.00	\$ 38,000.00	50%	\$ 19,000.00
TYPE 7 BOX AND INLET	2	EA.	\$ 20,000.00	\$ 40,000.00	50%	\$ 20,000.00
PIPES						
8" PERFORATED SLPF	2,176	L.F.	\$ 15.00	\$ 32,640.00	0%	\$ 32,640.00
15" SLPF	79	L.F.	\$ 28.00	\$ 2,215.82	75%	\$ 1,781.87
18" SLPF	1,491	L.F.	\$ 47.50	\$ 66,673.00	75%	\$ 50,004.82
24" SLPF	3,337	L.F.	\$ 60.00	\$ 200,212.44	75%	\$ 150,159.33
30" SLPF	2,252	L.F.	\$ 80.00	\$ 180,160.44	75%	\$ 135,120.33
36" SLPF	837	L.F.	\$ 92.50	\$ 81,579.71	75%	\$ 61,184.78
48" SLPF	1,525	L.F.	\$ 130.00	\$ 198,250.80	75%	\$ 148,688.10
60" SLPF	1,109	L.F.	\$ 140.00	\$ 155,260.20	50%	\$ -
18" RCP	266	L.F.	\$ 53.00	\$ 14,118.00	0%	\$ 14,118.00
24" RCP	185	L.F.	\$ 70.00	\$ 12,950.00	0%	\$ 12,950.00
36" RCP	63	L.F.	\$ 105.00	\$ 6,765.00	0%	\$ 6,765.00
48" RCP	34	L.F.	\$ 130.00	\$ 4,420.00	0%	\$ 4,420.00
MANHOLES						
4' DIA	36	EA.	\$ 3,300.00	\$ 118,800.00	0%	\$ 118,800.00
5' DIA	4	EA.	\$ 4,300.00	\$ 17,200.00	75%	\$ 4,200.00
6' DIA	1	EA.	\$ 5,300.00	\$ 5,300.00	75%	\$ 1,275.00
8' DIA	5	EA.	\$ 8,000.00	\$ 40,000.00	75%	\$ 10,000.00
D-WENDWALL / HEADWALL						
EW 21"	1	EA.	\$ 2,125.00	\$ 2,125.00	0%	\$ 2,125.00
EW 36"	19	EA.	\$ 3,125.00	\$ 59,375.00	100%	\$ -
EW 48"	5	EA.	\$ 4,125.00	\$ 20,625.00	100%	\$ -
ENERGY DISSIPATOR	1	EA.	\$ 8,000.00	\$ 8,000.00	0%	\$ 8,000.00
OUTLET STRUCTURE	4	EA.	\$ 4,000.00	\$ 16,000.00	100%	\$ -
SC250 EROSION CONTROL MATTING	3,913	S.V.	\$ 3.00	\$ 11,740.00	100%	\$ -
SWMBMP FACILITY #1 - #7	4	EA.	\$ 30,000.00	\$ 120,000.00	0%	\$ 120,000.00
STORM DRAINAGE SUBTOTAL:				\$ 1,794,613.91	55%	\$ 1,088,962.57
WATER						
4" C-900 WATER SERVICE LINE	165	L.F.	\$ 20.00	\$ 3,300.00	0%	\$ 3,300.00
6" C-900 WATER SERVICE LINE	830	L.F.	\$ 60.00	\$ 49,800.00	0%	\$ 49,800.00
8" C-900 WATER SERVICE LINE	2,015	L.F.	\$ 70.00	\$ 141,250.00	100%	\$ -
10" C-900 WATER SERVICE LINE	4,014	L.F.	\$ 80.00	\$ 321,120.00	15%	\$ 41,147.00
WATER METER PIT	1	EA.	\$ 30,000.00	\$ 30,000.00	100%	\$ -
FIRE HYDRANT	14	EA.	\$ 10,000.00	\$ 140,000.00	20%	\$ 112,000.00
WATER VALVE	14	EA.	\$ 5,000.00	\$ 70,000.00	10%	\$ 63,000.00
WATER SUBTOTAL:				\$ 934,220.00	20%	\$ 186,947.00
SANITARY SEWER						
4" PVC	491	L.F.	\$ 45.00	\$ 22,095.00	100%	\$ -
8" PVC	258	L.F.	\$ 60.00	\$ 15,480.00	100%	\$ -
SANITARY MANHOLE	1	EA.	\$ 2,300.00	\$ 2,300.00	100%	\$ -
SANITARY CLEANOUT	5	EA.	\$ 230.00	\$ 1,150.00	100%	\$ -
SANITARY SEWER SUBTOTAL:				\$ 25,225.00	100%	\$ -
MISCELLANEOUS						
MOBILIZATION	1	EA.	\$ 25,000.00	\$ 25,000.00	100%	\$ -
CONSTRUCTION LAYOUT & CONTROL	1	EA.	\$ 20,000.00	\$ 20,000.00	100%	\$ -
AS-BUILT PLANS	1	EA.	\$ 15,000.00	\$ 15,000.00	0%	\$ 15,000.00
BULK EARTH MOVING	330,000	CY	\$ 3.50	\$ 1,155,000.00	60%	\$ 693,000.00
RETAINING WALLS	18,217	S.F.	\$ 23.00	\$ 419,000.00	30%	\$ 293,300.00
STOP BARS & CROSSWALES	1	L.S.	\$ 10,000.00	\$ 10,000.00	0%	\$ 10,000.00
DOUBLE YELLOW PAINT LINE (DRIVEWAY)	1,560	L.F.	\$ 5.00	\$ 7,800.00	0%	\$ 7,800.00
WHITE PAINT LINE (PARKING & TRUCK LANES)	1	L.S.	\$ 30,000.00	\$ 30,000.00	0%	\$ 30,000.00
CHAIN-LINK FENCING	8,074	L.F.	\$ 20.00	\$ 161,480.00	0%	\$ 161,480.00
SIGNAGE	17	EA.	\$ 200.00	\$ 3,400.00	0%	\$ 3,400.00
TREES	780	EA.	\$ 200.00	\$ 156,000.00	0%	\$ 156,000.00
SHRUBS	451	EA.	\$ 80.00	\$ 36,080.00	0%	\$ 36,080.00
PERENNIALS / GRASSES	2,306	EA.	\$ 12.00	\$ 27,672.00	0%	\$ 27,672.00
SITE LIGHTING	114	EA.	\$ 2,000.00	\$ 228,000.00	0%	\$ 228,000.00
ROUTE 940 CONCRETE SIDEWALK	1,488	S.V.	\$ 40.00	\$ 59,520.00	0%	\$ 59,520.00
MONUMENTS	2	EA.	\$ 500.00	\$ 1,000.00	0%	\$ 1,000.00
IRON PIN	20	EA.	\$ 100.00	\$ 2,000.00	0%	\$ 2,000.00
MISCELLANEOUS SUBTOTAL:				\$ 3,511,877.00	45%	\$ 1,580,949.50

BID-PROPOSAL

This form complies with professional standards in effect January 1-December 31, 2023



JPA MASONRY,LLC
PO BOX 452
MT POCONO PA 18344
OFFICE- 570-839-9656/ FAX-570-839-8500
PA REGISTRATION # 014651

DATE:
September 14, 2023
PROPOSAL NO:
09142023-1

<i>and</i> BUYER/ OWNER	NAME			
	PROJECT ADDRESS	CITY	STATE/ZIP	PHONE
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	Mt Pocono Dog Park	Mt Pocono	PA 18344	570-839-8436
	1361 Pocono Blvd			Ext 301
	mduffy@mountpocono-pa.gov			

Project To Begin: _____ Contract Completion Date: _____

Date Of Plans: _____ Architect: _____ Engineer: _____

Work performed at _____
(Street Address And Legal Description If Known)

We hereby propose to furnish the following work: Sidewalk - 180' of 4' wide sidewalk with 8x16 area inside the gate - \$14,713

- * Excavate 8" of earth for entire area of sidewalk.
- * Install 4" of stone base.
- * Install 4" of concrete sidewalk.
- * Top of sidewalk to be at the bottom of the entry gate.
- * Excavated material to be dumped at the borough site.

PROPOSED PAYMENT: Owner agrees to pay Contractor a total price of \$14,713.00
The payment schedule will be: (1) Down payment of \$7,356.50 (2) Payment schedule as follows: Balance due upon completion.

NOTE: This proposal may be withdrawn by us if not accepted within 30 days.

ACCEPTANCE OF PROPOSAL

You are hereby authorized to return a formal contract between us to accomplish the work described in the above proposal, for which the undersigned agrees to pay the amount stated in said proposal and according to the terms thereof.

X _____ /23

OWNER/BUYER SIGNATURE DATE

X _____ /23

CONTRACTOR SIGNATURE
© 2023 ABCA Forms.

OWNER/BUYER SIGNATURE DATE

Rev 2023110200001

MT POCONO BOROUGH-MONROE CO

10635512963614

Archive:

10.8.5.24

Individual Lot (- - INC 63933)

1406 POCONO BLVD

Non-Conforming Use:

Owner: B & B REALTY CO

Zip: 18344

Joined Lot:

Non-Conforming Lot:

921 DRINKER TURNPIKE

Water:

Non-Conforming Str:

COVINGTON TWP PA 18444-...

Sewer:

EDUs: 4.00

Use Code: 541

Phone:

Alt:

Rental: Units:

Deed Date: 12/24/2012

Fax:

Width x Length:

Sale Price: \$350,000

Acreage: 0.28

Assessment:

Resident:

Sq Ft:

Zoning: C-1

Impervious:

Flood:

Setback Front:

Rear:

Critical Slope:

Setback Side 1:

Side 2:

Stream:

Min. Lot Size:

Wetland:

Account: 10/8/5/24 Acreage: 0.28

2/10/17 - OWNER NOTIFIED US THAT THERE ARE NO TENANTS AT THIS TIME & THAT HE WILL PROBABLY RAIZE THE PROPERTY THIS YEAR.

10/7/15 - REC'D CALL FROM TENANT (SINIO) WHO IS COMPLAING THAT HER TRASH HAS NOT BEEN PICKED UP FOR 2 WEEKS. SHE WAS INFORMED THAT SHE MUST SPEAK WITH HER LANDLORD.

12/19/13 - ZO sent violation letter for illegal A-Fram sign certified/ regular mail

3/6/12 - GRANDPA PETE'S REC'D ALARM PERMIT

9/9/11 - REC'D T/R (APT #4) (STARTED 8/11/11 ENDING 8/11/12) & PAID WITH CHECK #5795. -

NEEDS TO SCHEDULE INSPECTION (MARIO SAID HE HAS TO PUT ONE OUTLET IN PRIOR TO SCHEDULING INSPECTION.

7/8/10 - REC'D T/R (3 APTS) - 1 NEEDING INSPECTION

5/19/10 - SENT T/R REQUEST

4/2/09 - SENT STREET SWEEPING LETTER

10/26/09 - SENT SIDEWALK MAINTENANCE INVITATION

Permits:	Permit Type	Permit No.	Tenant	Description	Issue Date	Status
	Alarm Per...	070033		ALARM PERMIT - BAG...	6/13/2007	Complete
	Alarm Per...	120001		ALARM PERMI - GRA...	3/6/2012	Complete
	Rental Pe...	100109		TENANT - 58A POCO...	7/8/2010	Complete
	Rental Pe...	100110		TENANT - 58B POCO...		Complete
	Rental Pe...	100111		TENANT - 58C POCO...	7/8/2010	Complete
	Rental Pe...	110228		TENANT - 60 POCNO...		Complete
	Zoning P...	120005		Signs	3/6/2012	Complete
	Zoning P...	120006		Occuoancy	3/6/2012	Complete
	Zoning P...	180013		Comm'l Demolition	7/3/2018	Active

Prev. Owners:	Previous Owner	Address	Change Date
	SCAVELLO, MARIO &...	8 SHELLY LANE, MT POCONO, PA 18344	11/7/2014

Tenants:	Type	Name	Address	Move In	Move Out	Unit No.
	RESIDE...	KASCLE JR, H...	58 POCONO BLVD	9/1/1999	12/30/2016	A



Home [Property Search](#)

[Address](#) [Parcel ID](#) [Owner](#) [Map #](#)

[Profile](#)

PARID: 10.8.5.24

1406 POCONO BLVD

[Values](#)

2023 Values

1 of 1

[Return to Search Results](#)

[Sales](#)

Building Value \$2,870 ← Vacant Lot

[Permits](#)

Land Value \$85,200

[Residential](#)

Total Value \$88,070

[Commercial](#)

C&G

[Sketch](#)

Clean and Green 0

[Photos](#)

Taxable Land 85,200

[Map](#)

Taxable Building 2,870

[OBY](#)

Total Taxable Value 88,070

[Additional Owners](#)

Actions

[Printable Summary](#)

[Printable Version](#)

