

**TOBYHANNA TOWNSHIP ECONOMIC DEVELOPMENT AUTHORITY
MONROE COUNTY, PENNSYLVANIA**

RESOLUTION NO. 2018 -002

**A RESOLUTION OF THE TOBYHANNA TOWNSHIP ECONOMIC DEVELOPMENT
AUTHORITY BOARD OF DIRECTORS ESTABLISHING A PUBLIC IMPROVEMENT
LEVY TO FUND ECONOMIC DEVELOPMENT ACTIVITIES.**

WHEREAS, the Tobyhanna Township Economic Development Authority (“TTEDA”) is a body corporate and politic, duly organized under the Municipal Authorities Act, Act 2001, June 19, P.L. 287, No. 22, § 1, 53 Pa. C.S.A. § 5601 *et seq.* (“Act”) and

WHEREAS, Section 5607(d)(9) of the Act confers upon the TTEDA the power to fix, alter, charge and collect rates and other charges in the area served by its facilities at reasonable and uniform rates to be determined exclusively by the TTEDA for the purpose of providing for the payment of expenses of the TTEDA, the construction, improvement, repair, maintenance and operation of its facilities and properties, and the payment of the principal of an interest on its obligations and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations and

WHEREAS, Section 5607(d)(9) of the Act also confers upon the TTEDA to determine by itself exclusively the services and improvements required to provide adequate, safe and reasonable service including extensions thereof, in the areas served by its facilities.

WHEREAS, the TTEDA Board of Directors (“Board”) desires to establish a public improvement levy (“PIL”) and to adopt policies and procedures for the collection and enforcement of the PIL, which shall be governed by this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board and it is hereby resolved by said Board that the following policies, rules and procedures regarding the PIL imposed by the TTEDA are hereby adopted:

SECTION 1. DEFINITIONS.

- (a) “Affiliated Group.” One or more chains of entities connected through ownership with a common parent entity if:

- i. Ownership interests possessing at least eighty (80%) percent of the voting power of all classes of ownership interests and at least eighty (80%) percent of each class of the nonvoting ownership interests of each entity, except the common parent entity, is owned directly by one or more of the other entities.
 - ii. The common parent entity owns directly ownership interests possessing at least eighty (80%) percent of the voting power of all classes of ownership interests and at least eighty (80%) percent of each class of the nonvoting ownership interests of at least one of the other entities.
- (b) “Calendar Year.” The period January 1 to December 31, inclusive.
- (c) “Gross Revenues.” Except as provided in subsection (d) of this Section, Gross Revenues upon which the PIL is computed consists of sales of (i) tangible personal property (“goods”) and (ii) lodging, entertainment, amusement and other service (collectively, “services”) sourced to the PIL Area and shall include the gross consideration, whether made in cash, credits, property of any kind or nature, credited or received for or on account of such sales, including title transfers, exchanges, barter, bailment and re-sales taken by a dealer as a trade-in or as part payment for other goods or services.
 - i. A sale of goods is sourced to the PIL Area if a purchaser, whether a customer, reseller or agent of any kind:
 - A. Takes possession of the goods or otherwise receives goods in the PIL Area; or
 - B. Orders goods at a location of a PIL Player within the PIL Area regardless of where goods are delivered.
 - ii. A sale of services is sourced to the PIL Area if a purchaser or user, whether a customer, reseller or agent of any kind:
 - A. Uses the services in the PIL Area;
 - B. Benefits from the services in the PIL Area; or
 - C. Attends or observes services in the PIL Area.
 - iii. In computing Gross Revenues no deduction shall be taken therefrom an account of the cost of property sold, materials used, labor, service or other cost, interest or discount paid or any other expense.
 - iv. Gross Revenues shall include the amount charged by a PIL Payer, and described under Section 2(e) as a pass through to its customers of the PIL.

(d) “Gross Revenues Exclusions.” Exclusions from Gross Revenues are limited to the following”

- i. Reimbursement of expenses, but only if the PIL Payer actually incurred such expenses and did so as agent of another from whom reimbursement is received in the exact amount expended.
- ii. Taxes collected as agent for the United States of America or the Commonwealth of Pennsylvania or its political subdivisions where the customer or ultimate consumer pays the tax. Such taxes shall include but not be limited to Pennsylvania sales and use tax and Pennsylvania and federal motor fuels taxes.
- iii. Refunds, credits or allowances given by a seller to a purchaser on account of goods returned, defects in goods sold or services unused may be excluded from the seller’s Gross Revenues only if the seller’s receipts from the original sale of such goods or services are or were included in Gross Revenues in the current or any previous year’s PIL base. If receipts from the sale of goods or services were or are excluded from Gross Revenues by virtue of any provision of this Resolution or any regulations promulgated thereunder, then any refunds, credits or allowances attributable to such sales may not be excluded from the seller’s Gross Revenues.
- iv. Trade discounts allowed to customers may be deducted in ascertaining the amount to be reported from Gross Revenues. Trade discounts include:
 - A. Discounts deducted from the face amount of the bill as a medium of adjusting the list price; and
 - B. Discounts unconditionally deducted by customers upon settlement of their bills and allowed as a matter of established custom of a trade, without regard to the due date of such bills or to the form or terms in which such discounts are described or stated on bills or invoices. Discounts allowed to customers as cash discounts for prompt payment of their bills may not be deducted from receipts unless such discounts are taken at the time of sale.
- v. Receipts from a member of an Affiliated Group of which the PIL Payer is a member.
- vi. Receipts from a shareholder, member, partner or other owner of the PIL Payer.
- vii. Rents from leases of real estate located in the PIL Area.
- viii. Sales of real estate located in the PIL Area.

- ix. Cost of capital assets against the receipts on the sale or exchange of capital assets located in the PIL Area that is owned by a PIL Payer and not held for sale to customers of a PIL Payer. Any excess of such costs may be offset against receipts from other sales or exchanges of capital assets but may not be excluded from any other Gross Revenues of the PIL Payer.
- x. Insurance proceeds for damages to tangible property located in the PIL Area.
- xi. Commissions and fees received for services rendered as a real estate broker or agent, attorney, financial institution or closing agent in promoting the purchase or sale of real estate located in the PIL Area.
- xii. Receipts of a contractor or subcontractor derived from the performance of a contract, including from charges for materials, labor, supervision, overhead costs and profits of a contractor or subcontractor, for the construction, alteration, repair or improvement of real property located in the PIL Area.
- xiii. Receipts of a contractor derived from the performance of a contract, including from charges on such a contract for materials, labor, supervision, overhead costs and profits of a contractor, for the repair, alteration or improvement of tangible personal property that is used by a PIL Payer and not held for sale to customers of a PIL Payer.
- xiv. Commissions paid by a broker to another broker on account of a contract of purchase or sale initiated, executed or cleared in conjunction with the other broker, except where either is an employee of the other.
- xv. Commissions paid by an agent to another agent on account of a contract of purchase or sale initiated, executed or cleared in conjunction with the other agent, except where either is an employee of the other.
- xvi. Fees paid by an attorney to another attorney where a matter has been forwarded either from or to the first attorney to or by the second attorney.
- xvii. In the case of financial businesses:
 - A. The cost of securities and other intangible property and monetary metals sold, exchanged, paid at maturity or redeemed, but only to the extent of the total Gross Revenues from securities and other intangible property and monetary metals sold, exchanged, paid out at maturity or redeemed;
 - B. Moneys or credits received in repayment of the principal amount of deposits, advances, credits, loans and other obligations; and
 - C. Interest received on account of deposits, advances, credits, loans and other obligations but only to the extent of interest expenses attributable to such deposits, advances, credits, loans and other obligations.

- (e) “Person.” Any individual, corporation, joint stock company, joint stock association, cooperative, association, limited liability company general partnership, limited partnership, limited liability partnership, or trust organized, formed or otherwise established under the laws of the United States, the Commonwealth of Pennsylvania or any other state, territory, or foreign country or dependency. Whenever used in this Resolution prescribing or imposing the collection of a delinquent payment of a PIL, a penalty or interest for late payment of a PIL, the term “person” as applied to (i) corporations, joint stock companies/associations or cooperatives means the officers thereof; (ii) associations, limited liability companies, general partnerships, limited partnerships or limited liability partnerships means the partners or members thereof, and (iii) trusts means the trustees thereof.
- (f) “PIL Area.” The area served by TTEDA facilities, which currently consists of the following two parcels:
 - i. Monroe County Parcel # 19/2/1/1-4, PIN 19635400083556, consisting of 150.95 acres and currently owned by Kalahari Resorts, LLC.
 - ii. Monroe County Parcel # 19/2/1/1, PIN 1963550002620, consisting of 173.88 acres and currently owned by Pocono Manor Investors LP and under a sale agreement with the Developer.
- (g) “PIL Payer.” Any Person who is an owner of real estate located in the PIL Area or who is a tenant, franchisee, retailer, wholesaler, service provider or other seller of goods or services located within the PIL Area, except this term shall not include individuals employed for a wage or salary and agencies of the Government of the United States or of the Commonwealth of Pennsylvania and political subdivisions.
- (h) “Public Improvement Levy” or “PIL.” The fee imposed by the TTEDA on PIL Payers to provide for the payment of expenses of the TTEDA, the construction, improvement, repair, maintenance and operation of TTEDA facilities and properties, and the payment of the principal of an interest on TTEDA obligations and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations.
- (i) “TTEDA.” The Tobyhanna Township Economic Development Authority.

SECTION 2. PUBLIC IMPROVEMENT LEVY.

- (a) Imposition of the PIL. The PIL is imposed on all PIL Payers, effective June 1, 2018.
- (b) Rate of the PIL. The rate of the PIL is one percent (1.0%) of Gross Revenues of PIL Payers on and after June 1, 2018.

(c) Payment of the PIL; Penalty and Interest on Late Payments.

- i. *Payment of the PIL.* The PIL charged pursuant to this Resolution shall be due and payable in lawful money of the United States of America and payable to the office of the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) on the twentieth (20th) day of each calendar month measured by the actual Gross Revenues generated in the preceding calendar month. The TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) may promulgate regulations or other rules to establish a quarterly or annual payment of the PIL based on stated threshold amount(s).
- ii. *Late Payment Penalty & Interest.* If a PIL is not timely paid, a five percent (5%) penalty shall be added thereto, plus interest of one percent (1%) per month or fractional part of a month and until paid.
- iii. *Receipt on Request.* Upon written request, the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) shall, upon payment to the TTEDA of the PIL, give the person paying the same a receipt therefore.

(d) PIL Reporting.

- i. *Report Forms.* The registration form and every report required to be filed shall be made upon an electronic and/or printed form furnished by the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s). Every person making a report shall state thereon its truthfulness under penalties of perjury of law.
- ii. *Registration.* Within 10 days of becoming a PIL Payer, the PIL Payer shall submit a written registration form to the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s).
- iii. *Payment Activities Reports.* The PIL payments shall be accompanied by a report setting forth all data necessary to calculate the PIL for the applicable period.. If a PIL Payer fails to furnish the TTEDA a Payment Activities Report, the PIL will be estimated from prior periods for which such data is available, with any necessary adjustments calculated after an accurate Payment Activities Report is delivered to the TTEDA by the PIL Payer for the period in question and applied as credits or charges to the next succeeding period.
- iv. *Annual Reconciliation Report.* In addition to the Payment Activities Report, the PIL Payer shall submit an Annual Reconciliation Report to the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) on or before April 15 following the close of each Calendar Year. For the annual report due on April 15, 2019 the Gross Revenues will be for

the period from June 1, 2018 through December 31, 2018. The Annual Reconciliation Report shall report the Gross Revenues and PIL payments made for the Calendar Year. Any balance due disclosed on the Annual Reconciliation Report shall be immediately due and payable to the office of the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s). Any overpayment disclosed on the Annual Reconciliation Report shall be a credit taken against the next Payment Activities Report.

- (e) Pass Through of the PIL. The TTEDA does not require but will not prohibit the separate statement of the PIL on invoices or receipts issued by a PIL Payer to its customers ("Invoices"), provided that PIL Payer meets all the following conditions:
- i. The PIL is titled "Public Improvement Levy," "Public Improvement Fee" or "Resort Fee" and shall not exceed 1.01%.
 - ii. The PIL shall be indicated on the Invoices immediately below the itemization of goods and/or services purchased and not immediately adjacent to the Pennsylvania sales tax applicable to such goods and/or services.
 - iii. The PIL Payer shall not identify, treat or refer to the PIL as a tax.
- (f) Inspection of PIL Payer Books and Records.
- i. The PIL Payer shall maintain such records and books of account ("Books and Records") to make a true and accurate computation and reporting of the PIL in accordance with the provisions of this Resolution. The Books and Records shall disclose in detail the Gross Revenues and other data pertaining to the PIL Payer's Gross Revenues and any Gross Revenue Exclusions claimed, and shall be sufficiently complete to enable the TTEDA Executive Director or the TTEDA Executive Director's the TTEDA Executive Director's duly appointed designee(s) to verify all transactions.
 - ii. The Books and Records shall be maintained or made available in Tobyhanna Township. In the event that all necessary Books and Records and other pertinent information are not maintained or made available in Tobyhanna Township, all reasonable travel expenses (transportation, lodging, meals and incidentals) incurred by the TTEDA or its authorized representative will be reimbursed by the PIL Payer upon presentation of an invoice with supporting bills/receipts attached.
 - iii. For a period of three (3) years after submission of the reports set forth in Section 2(d) above, the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) is hereby authorized to examine the books, papers and records of any person subject to or supposed to be subject to the PIL imposed by this Resolution, in order to verify the accuracy of the form submitted or, if no form was submitted, ascertain the PIL due. The

period for such examination is six (6) years after submission of the reports set forth in Section 2(d) above if the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) has reasonable belief that the PIL for any prior period was underpaid by twenty-five per cent or more. There is no limitation of time for such examination for any period for which a report was due and not submitted.

- iv. In the event an inspection or audit by or on behalf of the TTEDA discloses any discrepancy in any reports set forth in Section 2(d) above and/or in the amount of any PIL or other sums of money owed to the TTEDA, the PIL Payer shall immediately pay the unpaid amount owed to the TTEDA plus a service charge of two percent (2%) per month of said amount for each month from the date said amount shall have been paid to the TTEDA to the date payment is made to the TTEDA. If the TTEDA deems it appropriate, the TTEDA may waive the two percent (2%) per month service charge in whole or in part on the amount owed the TTEDA as determined in the inspection or audit. Further, in the event an aforesaid audit or inspection discloses a single cumulative discrepancy in excess of three percent (3%) of the amount previously paid by the PIL Payer to the TTEDA on account of the audit period in question, the PIL Payer shall immediately pay to the TTEDA the cost of the audit and/or inspection. Said cost of the audit and/or inspection shall include all direct and indirect salary cost of the TTEDA, any charges made by any consultant or attorney of the TTEDA, materials, supplies and administrative overhead, as shall be determined by the TTEDA Executive Director at such time.

(g) Duties of the TTEDA Executive Director

- i. The TTEDA Executive Director is charged with the duties of collecting and receiving the PIL and any penalties and interest imposed by this Resolution. It shall be the TTEDA Executive Director's duty to keep a record showing the amount received from each person paying the PIL and the date of such receipt.
- ii. The TTEDA Executive Director and the TTEDA Executive Director's duly appointed designee(s) under the direction of the Board of Directors are hereby empowered with the approval of the Board of Directors to prescribe, adopt and promulgate regulations and/or rules relating to any matter pertaining to the administration and enforcement of this Resolution, including provisions for the examination and correction of forms, and payments alleged or found to be incorrect, or as to which an overpayment is claimed, or found to have occurred, and charged with enforcing the provisions of this Resolution and any regulations and/or rules promulgated pursuant hereto.
- iii. In the event the person to be assessed neglects or refuses to make file a required form, the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) shall assess such person on such an

amount of Gross Revenues as the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) deem reasonable and appropriate. In all cases of assessment, the TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) shall give the parties assessed a notice in which shall be stated the amount of the PIL imposed or levied and a formal written appeal process as established and followed by the TTEDA Executive Director and the TTEDA Executive Director's duly appointed designee(s).

- iv. Any person aggrieved by any decision of the TTEDA Executive Director shall as in other cases have the right to appeal to the Court of Common Pleas of 43rd Judicial District of Pennsylvania which encompasses the County of Monroe.
- v. Any information gained by the TTEDA Executive Director or any other official, agent or employee of the TTEDA, as a result of any forms filed, investigations, hearings or verifications required or authorized by this Resolution, shall be confidential, except in accordance with proper judicial order or as otherwise provided by law.
- vi. The TTEDA Executive Director or the TTEDA Executive Director's duly appointed designee(s) shall have the power in the name of the TTEDA to institute proceedings against any and all persons who violate the provisions of this Resolution.
- vii. If for any reason the PIL is not paid when due and suit is brought for the recovery of any such levy, the person liable therefor, shall, in addition, be liable for the costs of collection and penalties and interest herein imposed.

SECTION 3. USE OF PIL PROCEEDS

The TTEDA will apply and use the amounts of the PIL remitted to it as follows:

- (a) First: to the payment of debt service on debt obligations incurred by the TTEDA in connection with the planning, design, acquisition, construction, financing and improvement of its structures, facilities, properties and undertakings;
- (b) Second: to pay the costs not otherwise funded by debt obligations of planning, design, acquisition, construction, financing and improvement of its structures, facilities, properties and undertakings structures, facilities and properties;
- (c) Third: to pay the annual maintenance and operating expenses, as well as any major maintenance expenses, expended by the TTEDA for its structures, facilities, properties, undertakings and services;

- (d) Fourth: to fund working capital and/or a reserve against any future shortfalls in PIL revenues;
- (e) Fifth: to defease or prepay the amounts of any indebtedness that the TTEDA has incurred in connection with its facilities and properties; and
- (f) Sixth, to be held in reserve to pay the cost of future facilities, properties, improvements to its facilities and properties, and/or services.

SECTION 4. SEVERABILITY.

In the event any provision, section, sentence, clause or part of this Resolution shall be held to be invalid, such invalidity, unconstitutionality or illegality shall not affect or impair any of the remaining provisions, sections, sentences, clauses or parts of this Resolution, it being the intent of the Board that the remainder of this Resolution shall remain in full force and effect.

SECTION 5. EFFECTIVE DATE.

This Resolution shall take effect immediately, except the PIL may not commence unless and until the Tobyhanna Township Board of Supervisors has approved (a) the TTEDA plan for its “business improvements” and “administrative services” as those terms are defined in Section 5602 of the Act, (b) the estimated costs of such business improvements and administrative services, and (c) the proposed method of the PIL charge.

RESOLVED at a regularly scheduled meeting of the Tobyhanna Township Economic Development Authority on the 4th day of April, 2018, a quorum being present.

TOBYHANNA TOWNSHIP ECONOMIC DEVELOPMENT AUTHORITY

By: 
Chairman

Attest: 
Secretary

(SEAL)