



R 02320-0137 Jun 27, 2024  
Bellefonte-State College I-99 LLC  
Benner Commerce Park Owners Association  
06/27/2024 11:14:34  
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RECODER OF DEEDS  
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RECORDING VERSION

## SECOND AMENDED/RESTATED RESTRICTIVE COVENANTS THE BENNER COMMERCE PARK

Bellefonte-State College, 1-99, LLC (BSC) is the owner and Master Developer of the Benner Commerce Park in Benner Township, County of Centre, Commonwealth of Pennsylvania. A plan depicting the Benner Commerce Park (the “Park”) and the lots within the Park (the “Lots”) is attached hereto as Exhibit “A” and incorporated herein by reference. These Second Amended/Restated Restrictive Covenants of the Benner Commerce Park have been duly adopted by the owners of Lots within the Benner Commerce Park as of June 26, 2023 to be effective upon recording in the Centre County Recorder’s Office, and shall repeal/replace the Amended/Restated Restrictive Covenants of the Benner Commerce Park recorded on June 13, 2013 at Centre County Record Book 2127, Page 001. For clarity, the Restrictive Covenants of the Benner Commerce Park recorded at Record Book 2034, Page 170, and the Protective Covenants of the Benner Commerce Park recorded at Centre County Record Book 2076, Page 213 have previously been repealed/replaced.

### ARTICLE I DEVELOPMENT STANDARDS and GUIDELINES PROTECTIVE COVENANTS

#### Section 1. Covenant Purpose:

To create an aesthetically pleasing business and industrial park development, connect effectively with the community and environment, create and preserve long-term property values, and provide a productive working environment. To define shared standards and procedures of development and maintenance.

#### Section 2. Benner Commerce Park Owners Association and Covenants:

The Benner Commerce Park Owners Association (“BCPOA”) is a Pennsylvania non-profit corporation formed by Master Developer for the purpose of owning and maintaining the Common Areas and Common Facilities (as hereinafter defined) and for the administration and enforcement of this Declaration. The BCPOA shall be governed by the Amended/Restated Bylaws adopted of even date herewith as may be further amended from time to time, which replace the Bylaws recorded at Centre County Record Book 2034, Page 171 as previously amended.

A. **Acceptable Uses:** As defined by applicable zoning.

B. **Prohibited Uses:** Any use which is in violation of applicable ordinances, laws, and regulations of any governmental entity having jurisdiction over the use of all or any of the Lots. Any use which is in the opinion of the Executive Committee of the BCPOA would be incompatible with the success of the development.

C. **Landscape Design:** Should include attractively and harmoniously designed entry areas, parking areas and screens, stormwater basins, front, side and rear yards and retain existing

trees where possible. Landscape features should integrate with existing street trees and other landscape elements placed by the Master Developer.

**D. Side Perimeter Trees:** Linear interval plantings of shade trees should include varieties London Plane, Red Oak, Tuliptree and Honeylocust spaced 35' average for side yards, to integrate with rear perimeter plantings placed by Master Developer. Groups should include 10 or more trees, spacing may vary to allow openings, and tighter spacing.

**E. Lighting:** Approved by the Master Developer of unified style, size, and application to other properties in the Park.

**F. Signage:** Approved by the Master Developer in style, size, application.

**G. Economic Development Administration (EDA) Compliance:** Use of the Lots, specifically, Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 14 must be in compliance with the general and special purpose of the EDA grant for the Park, in this instance, business development. This covenant shall remain in effect for a period of twenty (20) years from the completion of the EDA grant. In addition, all real property improved with the EDA grant shall be environmentally compliant with both state and federal laws and shall not be used in violation of the nondiscrimination requirements set forth in 13 C.F.R. 302.20 or for inherently religious activities prohibited by applicable federal law.

**H. Maintenance of Undeveloped Lots:** All undeveloped Lots shall be maintained in accordance with the applicable weed ordinance for the municipality. If a Lot owner is not in compliance with the same, the BCPOA may elect to mow such lot and assess a fee to the applicable Lot owner for the costs of the same which fee shall be considered an assessment as described further herein and a lien against the applicable Lot.

**I. Building Design:** Should include attractively and harmoniously designed buildings generally compatible with the existing structures in the Park. The front of a building facing the street shall contain architectural features to distinguish it from the other sides of the building and clearly identify it as the building's main facade.

## **ARTICLE II** **DESIGN REVIEW**

**Section 1.** Design Review shall be completed by the Design Review Committee of the BCPOA. The purpose of the Design Review is to ensure that all Improvements in the Park meet the restrictions and requirements described in this Declaration.

**Section 2.** Submission to Design Review Committee of the BCPOA: No initial Improvements to a Lot will be constructed or maintained and no major alteration, repainting or refurbishing of the exterior of any Improvement situated on a Lot will be performed, unless complete site plans and/or specifications have been first submitted to and approved by the Design Review Committee of the BCPOA. The term "major" shall refer to alterations, repainting and/or refurbishing which shall require a building and/or zoning permit from municipal authorities. Submissions shall include a written certification by a registered architect, the site engineer for the Lot, and the contractor

building the Improvements that all covenants in this Declaration have been met by the plans for the Improvements.

**Section 3.** Approval Procedure: Any plans and specifications submitted to the Design Review Committee of the BCPOA will be approved or disapproved in writing within forty-five (45) days after submission. In the event that the Design Review Committee of the BCPOA fails to take any action within such period, it will be deemed to have approved the plans and specifications submitted; provided, however, that with respect to any such plans and specifications which contemplate a variation or waiver of any of the requirements and regulations in this Second Amended/Restated Declaration, such a variation or waiver will be deemed to have been refused. No site work on a Lot and for which Design Review Committee approval is required under this Article may commence until such approval by the Design Review Committee of the BCPOA.

**Section 4:** Standards: In deciding whether to approve or disapprove plans and specifications submitted to it, the Design Review Committee of the BCPOA shall use its best judgment to ensure that all Improvements, construction, site and landscape development and alterations on Lots conform to the requirements of this Second Amended/Restated Declaration. Furthermore such approval or disapproval shall rely upon the standards within existing municipal ordinances and shall not impose requirements in excess of those standards or the requirements of this Second Amended/Restated Declaration.

**Section 5.** Basis for Approval: Review and approval by the Design Review Committee of the BCPOA must be based upon the standards set forth in this Second Amended/Restated Declaration, municipal ordinances and regulations, and in any other guidelines specified by the Design Review Committee of the BCPOA with respect to a particular application.

**Section 6.** Liability for Damages: The Design Review Committee of the BCPOA will not be liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Article.

## **ARTICLE III** **RIGHTS TO COMMON AREAS AND COMMON FACILITIES**

**Section 1.** Ownership of Common Area Lots 5 and 13 as shown on Exhibit A: The BCPOA shall own all Common Areas in trust for the use and benefit of the Owners.

**Section 2.** Owner's Easements and Enjoyment: Every Owner shall have a right and easement of enjoyment in and to all the Common Areas and Common Facilities, which will pass with the title of every Lot. Every Owner may delegate his right and easement to the Common Areas and Common Facilities to his employees, tenants, invitees, lessees, guests or contract purchasers.

**Section 3.** Limitation of Easement: An Owner's right and easement of use and enjoyment concerning the Common Areas and Common Facilities shall be subject to the following:

A. Such rights and easement will not be exercised in any manner which substantially interferes with the purpose for which the Common Areas and Common Facilities are provided or with the right and easement of any other Owner.

B. The right of Benner Township in the County of Centre and any other governmental or quasi-governmental body having jurisdiction over all Lots to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Park for purposes of providing police and fire protection, and providing any other governmental or municipal services.

C. The rights of the Master Developer or its assigns to dedicate or transfer all or part of the Common Areas and Common Facilities to any Public Entity for such conditions as may be agreed to by the Master Developer. Upon any dedication or transfer of Common Areas and Common Facilities, the provisions of this Declaration relating to the maintenance will terminate to the extent the Public Entity assumes such maintenance.

D. The rights of the BCPOA, in its sole discretion, to grant such utility and right-of-way easements with respect to the Common Areas and Common Facilities as may be necessary or convenient to Lots and/or the development of any portion thereof.

**Section 4.** The Master Developer reserves the right to establish Common Areas and Common Facilities within any Lot owned by Master Developer at the time the same is established and to convey the same to the BCPOA. The BCPOA shall be obligated to accept the conveyance of additional Common Areas and Common Facilities and to maintain them in accordance with this Declaration from and after the date of conveyance.

## **ARTICLE IV** **MAINTENANCE OF COMMON AREAS AND COMMON FACILITIES**

**Section 1.** The BCPOA will maintain and operate, or provide for the maintenance and operation of, the Common Areas and Common Facilities and the Improvements located thereon or related thereto and may reconstruct, repair, or replace any Improvement.

**Section 2.** General and Special Assessments:

A. General Assessments. The BCPOA may assess each Owner for the cost of maintenance and operation of the Common Areas and Common Facilities, and of the Improvements located thereon, including the indirect costs, in each case in accordance with the applicable terms of the Amended/Restated Bylaws. Each Lot shall be subject to an annual assessment equal to the total annual cost of maintenance and operation of such Common Areas/Facilities and Improvements, multiplied by a fraction, the numerator of which is the land acreage of each such Lot and the denominator of which is the total land acreage of all Lots within the Park. An operating deposit equal to the annual assessment will be paid to the BCPOA and the operating deposit shall run with the land Owner to Owner. As of the date of adoption of these Second Amended/Restated Restrictive Covenants, the total Lots owned by each Owner, the total number of acres owned by each Owner and the corresponding votes of each Owner for both acreage-based and Per Lot (as defined in the Bylaws)-based voting are as set forth in Exhibit "C" as amended from time to time by the Executive Committee of the BCPOA or Master Developer.

B. Special Assessments: In addition to the annual assessment authorized above, the BCPOA may levy, in any year, a special assessment applicable to the year only for the limited purpose of defraying, in whole or in part, the cost of any reconstruction, repair, or replacement of

an Improvement upon the Common Areas and Common Facilities as may be necessitated by normal wear-and-tear and damage from the elements, in each case in accordance with the applicable terms of the Amended/Restated Bylaws.

C. Water System Fee Assessment: Owner understands and agrees that the Borough of Bellefonte, or its Authority, may assess a water system fee upon Owner, to include (i) Borough's cost of maintenance, repair and replacement of the easement, waterlines and equipment necessary to provide water to the Park, and (ii) any cost to the Borough for furnishing water to occupants of the Park in excess of the amounts received by Borough from the standard rates and charges collected by Borough. Any such water system fees, if not paid by Owner to Borough, will be deemed as assessment for purposes of this Article, and an Owner will be liable for assessment and payment as set forth in paragraph A of this Article.

D. Owner Liability for Payment of Assessments and Liens: The Owner of each Lot agrees to pay the assessments described in Paragraphs A, B, and C of this Section. Delinquent assessments, together with interest, costs, and reasonable attorney's fees will be a continuing lien upon the property against which the assessment is made and will be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation of delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

E. Notice of Annual Assessments: The BCPOA will estimate the amount of the annual assessment against each Lot in accordance with the Amended/Restated Bylaws or at least thirty (30) days in advance of each annual assessment period and fix the payment due date. Written notice of annual assessment will be sent to every Owner. At the end of the annual assessment period, the BCPOA will determine the exact cost of maintenance described in Paragraphs A, B, and C of this Section and charge or credit each Owner in the next annual assessment for the difference between the actual expense and the estimated expense maintenance.

F. The BCPOA will, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the BCPOA setting forth whether the assessments on a specific Lot have been paid and the certificate may be conclusively relied upon by the party requesting the same.

G. Effect of Nonpayment of Assessment: Remedies: Any assessment not paid within thirty (30) days after the due date, shall bear interest from the due date at the rate of six percent (6%) per annum. The BCPOA may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas and Common Facilities or abandonment of a Lot.

H. Subordination of the Lien to Mortgages and Deeds of Trust: The lien of the assessments provided for herein will be subordinate to the lien of any first mortgages and Deeds of Trust. Sale or transfer of any Lot will not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of any first mortgages and Deed of Trust, or any proceeding in lieu thereof, will extinguish the lien of such sale or transfer but will not extinguish the liability of the Owner. No other sale or transfer will relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 3.** Replacement or Repair of Property: Damaged or destroyed Common Areas and Common Facilities, or the property of the BCPOA used in connection with the Common Areas and Common Facilities, will be repaired or replaced by the BCPOA. The BCPOA may make a special assessment under Section 2B of this Article to cover such cost.

## **ARTICLE V** **LIMITATION OF RESTRICTIONS ON MASTER DEVELOPER**

**Section 1.** Master Developer's Work: The Master Developer is undertaking the work of developing a business and industrial park and incidental improvements upon the Lots subject to suitable evidence of the required township, county and state land use control approvals. The completion of that work and the sale, rental, and other disposal of said Lots is essential to the establishment and welfare of the Park as a business and industrial park.

**Section!.** Master Developer Exemptions: In order that said work may be completed and the Lots developed, nothing herein shall:

A. Prevent the Master Developer, its contractors or subcontractors from doing on a Lot owned by Master Developer or BCPOA, or a Common Area, whatever is reasonably necessary or advisable in connection with the completion of said work; or

B. Prevent Master Developer or its representative from erecting, constructing and maintaining on any Lot owned by Master Developer or BCPOA, or a Common Area, such structures as may be reasonably necessary for the conduct of its business or completing said work and establishing said property as a business and industrial park and disposing of Lots owned by Master Developer or BCPOA in parcel by sale, lease or otherwise; or

C. Prevent Master Developer from maintaining such sign or signs on any part of the Park owned by Master Developer or BCPOA, or a Common Area, as may be necessary for the sale, lease or disposition thereof.

## **ARTICLE VI** **GENERAL PROVISIONS**

**Section 1.** Enforcement: The BCPOA, or any Owner, will have the right to enforce, by any proceedings of law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provision of this document. Failure of the BCPOA or any Owner to enforce any covenant or restriction herein contained will in no event be deemed a waiver of the right to do so thereafter.

**Section 2.** Severability: Invalidation of any one of the covenants or restrictions by judgment or court order will in no way affect any other provision which shall remain in full force and effect.

**Section 3.** Duration: The covenants and restrictions of this document shall run with and bind the land, for a term of thirty (30) years from the date this document is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, to a maximum of ninety-nine (99) years, unless in perpetuity, by vote of the Owners as set forth in Section 4 of this Article.

**Section 4.** Terminations, and Amendments: Any termination or amendments of this document will take place only by written consent of the Master Developer (as long as it owns a Lot) and the holders of seventy-five (75%) percent of all votes. Each Owner will have one vote for each acre of land, or any fraction thereof, owned by it. Any termination or amendments of this Declaration must be recorded.

**Section 5.** No Severance of Right from Ownership of a Lot: No purchaser or Owner of any Lot will convey his interest under this document or the BCPOA pursuant to the provisions hereof, and no member of BCPOA will convey, transfer, sell, assign or otherwise dispose of his membership rights in BCPOA without at the same time conveying, selling and transferring his interest in the Lot to which his membership attaches, and the membership will be transferred only to a new Owner or purchaser of the Lot to which membership is attached.

**Section 6.** Interpretation: The captions which precede the Articles and Sections of this document are for convenience only and will in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include both genders. The invalidity or unenforceability of any portion of this document will not affect the validity or enforceability of the remainder. This document will be liberally construed to affect all of its purposes.

## **ARTICLE VII** **DEFINITIONS**

**Section 1.** “Master Developer” means:

A. “Master Developer” is BSC or its successors and assigns, if such successors and assigns are the Owner or Owners of any portion of the Park and are designated by BSC to serve as Master Developer. Following the designation of a new Master Developer by BSC, the term “Master Developer” as used in this Declaration shall mean such designee. Such designee shall have the right to designate the BCPOA to serve as Master Developer pursuant to subparagraph B of this section; or

B. The BCPOA if the Master Developer has assigned its rights and obligations to BCPOA pursuant to Paragraph A above.

**Section 2.** “Owner” is the record owner, whether one or more persons or entities, of fee simple title or any Lot, but excluding those having such interest solely as security for the performance of an obligation in which event the equitable owner of such fee simple title has been deemed to be the Owner.

**Section 3.** “Common Areas” means any parcel of land owned by the Master Developer or the BCPOA, in each case at the time of designation, and designated as a common area by Master Developer on a recorded subdivision map, including Lots 5 and 13 as shown on Exhibit “A” and/or as transferred to the BCPOA by the Master Developer. Lots 5 and 13 shall not be considered Lots for the purpose of this Declaration.

**Section 4.** “Common Facilities” mean all of the following together with an easement for the use of the same at such time as such easements are created and such facilities are constructed. A map of the existing facilities, as of the date of this instrument and to be amended from time to time by the Executive Committee of the BCPOA, is attached hereto as Exhibit “B” and incorporated herein by reference.

- A. All vehicular and pedestrian circulation systems unless dedicated to the Township.
  - B. All drainage easements and their drainage systems.
  - C. Any Improvements or Landscaped Areas in the Common Areas including Lots 5 and 13.
  - D. Street lights.
  - E. Park identification sign.
- F. Any of the foregoing located on Lots owned by the Master Developer or the BCPOA at such time as they are designated as Common Facilities by the Master Developer and transferred to the BCPOA.

**Section 5.** “Improvements” are and include, but not be limited to, buildings, out-buildings, driveways, exterior lighting, fences, landscaping, lawns, loading areas, parking areas, railroad trackage, retaining walls, roads, screening walls, signs, utilities, walkways, berms and swales, all of which are located on a Lot or a Common Area.

**Section 6.** “Landscaped Area” is a space of ground covered with lawn, ground cover, shrubbery, trees and the like which may be complimented with earth berms, masonry or similar materials, which was installed or constructed in accordance with the approved landscape plan and is within public right-of-way, Common Areas including Lots 5 and 13 and/or drainage easements.

**Section 7.** “Sign” is any structure, device or contrivance or graphic representation, electric or non-electric, and all parts thereof which was erected or used for advertising purposes upon or within which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.]**

**IN WITNESS WHEREOF**, BSC upon affirmative vote and at the direction of Owners of the Lots having the required number of votes have caused (he execution of this Second Amended/Restated Covenants of the Benner Commerce Park the 26<sup>th</sup> day of June)<sup>s</sup> 2024.

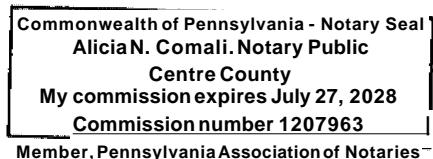
Bellefonte-State College 1-99, LLC

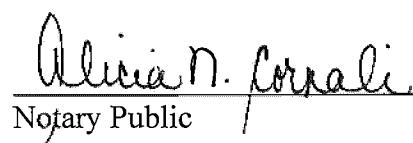
  
\_\_\_\_\_  
By: Robert E. Poole, Manager

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CENTRE )  
 ) SS:  
 )  
(P)

On this, the 26<sup>th</sup> day of June, 2024, before me a Notary Public, the undersigned officer, personally appeared Robert E. Poole, Manager of the said Bellefonte-State College 1-99, LLC, who being duly sworn according to law, acknowledges himself to be an officer of the said entity, and that he, as such officer, being authorized to do so, executed and acknowledged the foregoing instrument for the purposes therein contained.

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



  
\_\_\_\_\_  
Alicia N. Comali  
Notary Public

#### CERTIFICATE OF RESIDENCE

I hereby affirm that the precise address of the Benner Commerce Park Owners Association is 2121 Old Gatesburg Road, State College, Pennsylvania, 16803.

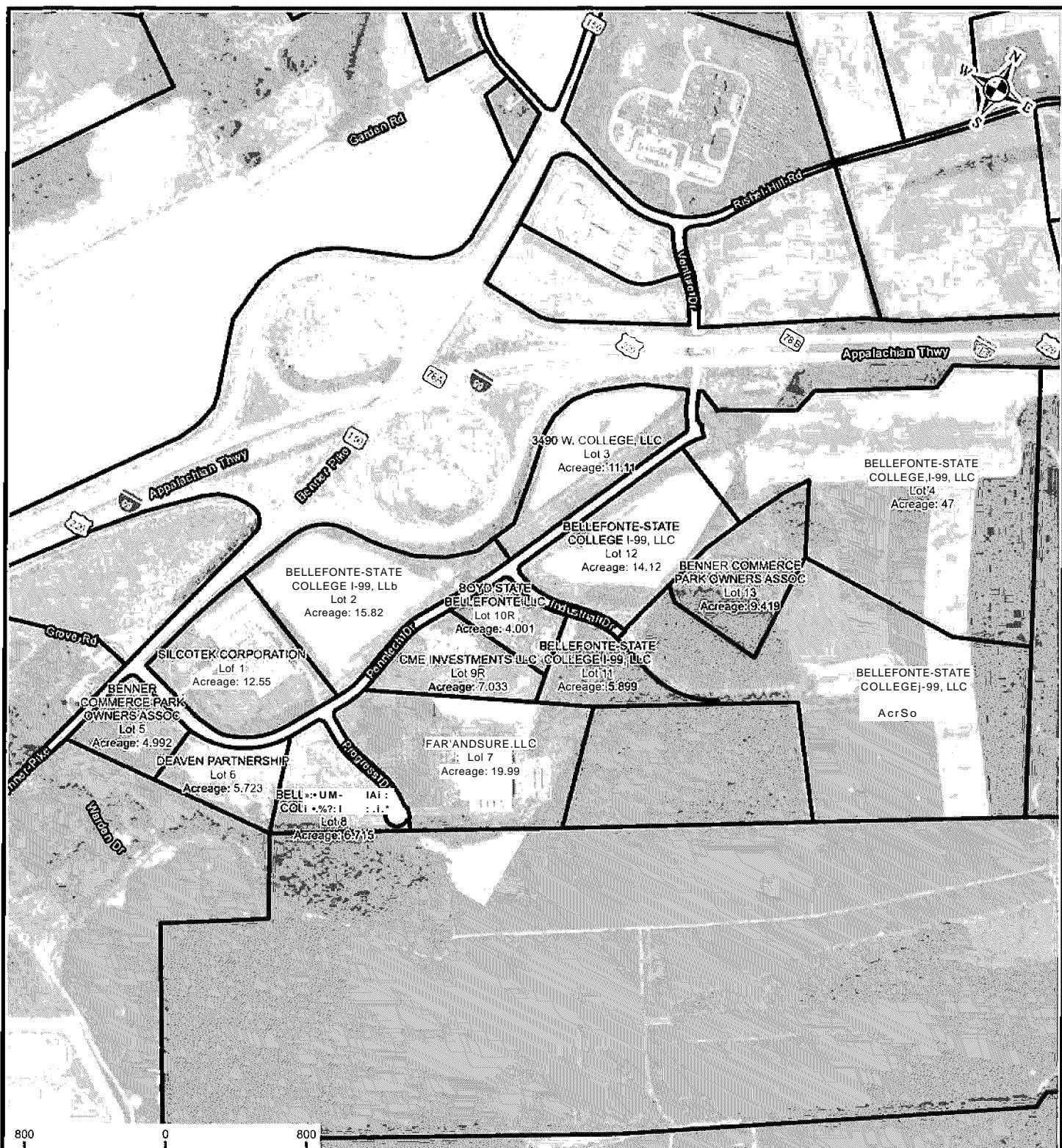
  
\_\_\_\_\_  
Agent

*RECORDING VERSION*

**Exhibit "A"**

Plan

See attached.



800 0 800

SCALE IN FEET

Notes:  
1. Imagery provided through Langan's subscription to Nearmap.com. Flown on 08/15/2021.  
2. Parcel data provided through Langan's subscription to ReportAll.

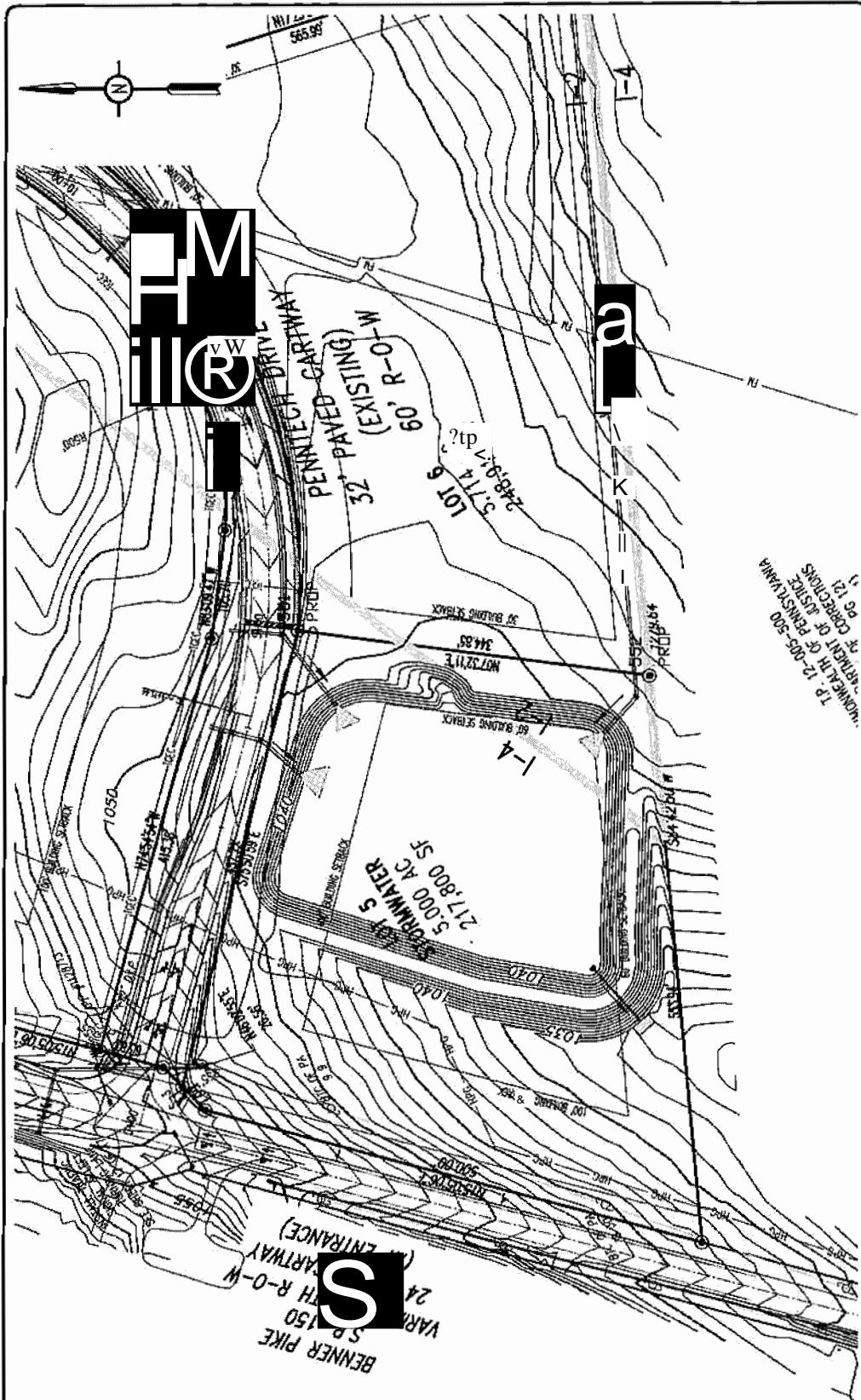
Legend  
PafC©|BOUndaPV

Project	Drawing Title	Project No.	Figure
<b>LANGAN</b> Langan Engineering and Environmental Services, Inc. 2400 Ansys Drive, Suite 403 Cdiunsbuyl, PA 15317-9540  T: 724.514.5100 F: 724.514.5101 www.langan.com	<b>BELLEFONTE WAREHOUSE</b> BENNER TOWNSHIP CENTRE COUNTY PA  <b>PARCEL MAP</b>	250164701 Date 6/14/2024 Scale 1" = 800 feet Drawn By LDB	1

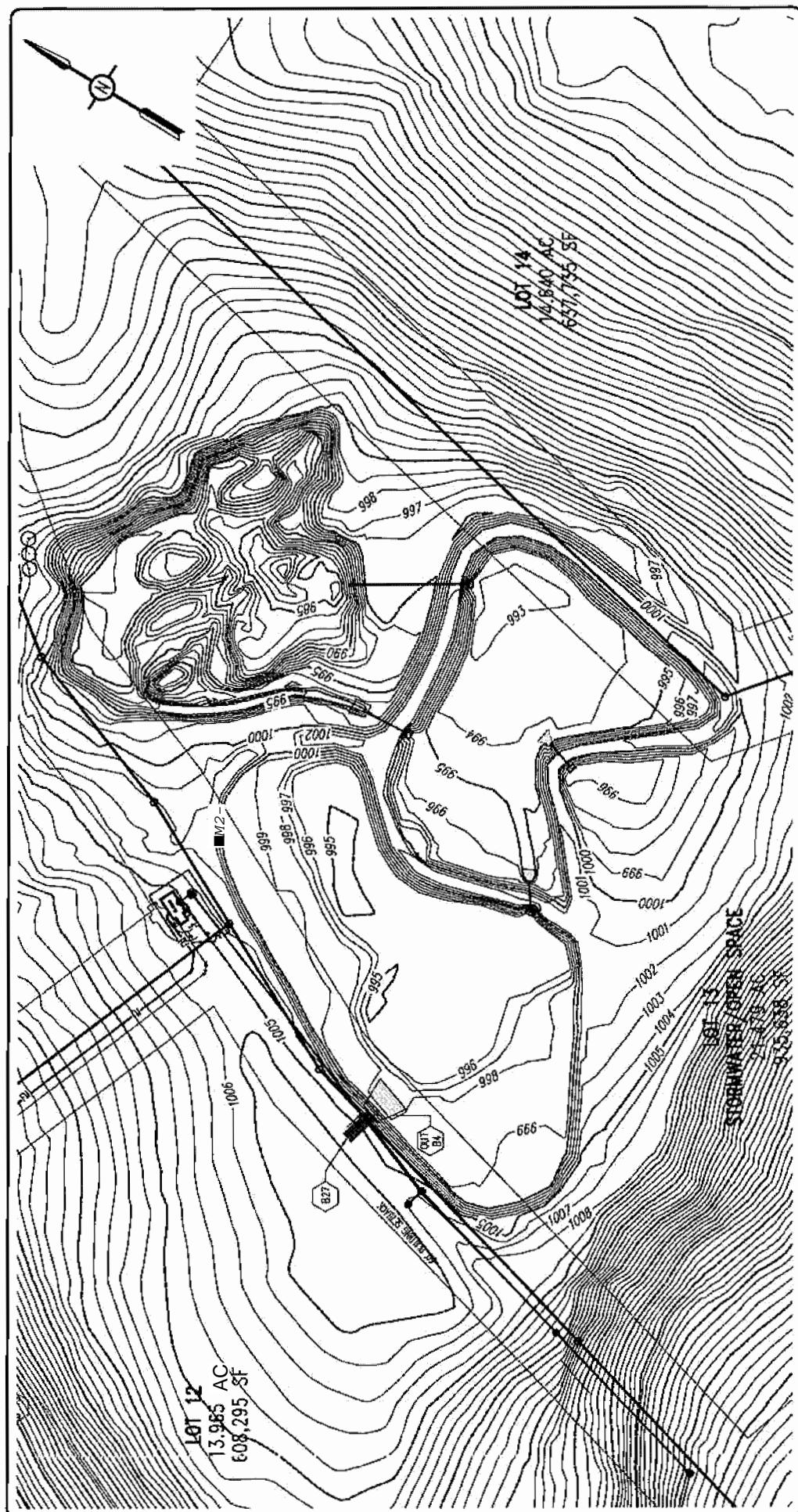
**Exhibit “B”**

Existing Facilities

See attached (2 Pages).



<b>BENNER COMMERCE PARK</b> <small>BENNER TOWNSHIP • CENTRE COUNTY » PENNSYLVANIA</small>	
<b>EXHIBIT B - EXISTING FACILITIES</b>	
JUNE 19, 2024	Project No. 05182 " Scale $r=100'$ Sheet No. 1



Project No.		05182	
Scale		1"=100'	
Sheet No.		1	
<b>BENNER CQWERCE PARK</b> BENNER TOWNSHIP • CENTRE COUNTY • PENNSYLVANIA			
<b>EXHIBIT B - EXISTING FACILITIES</b> JUNE 19, 2024			
Designers _____ EAH _____ Proj. Manager _____ ME _____ Surveyor _____ BRK. _____ A-____ B-____ C-____ D-____ P-____ Q-____ R-____ S-____ 3-____ F-____			
Date _____ By _____ Revisions _____			
<b>PennTerra</b> S? TM SEM STATE COLLEGE, PA 16801 PH: 814-231-8225 Fax: 814-237-2308 <a href="http://WWW.PENNTERRA.COM">WWW.PENNTERRA.COM</a>			

## Exhibit “C”

### Ownership Chart

<u>Lot Number</u>	<u>Owner</u>	<u>Acreage</u>	<u>Assessment Percentage</u>	<u>Affiliated with BSC</u>	<u># of Votes Based on Acreage (and %)</u>
1	Silcotek Corp.	12.55	6.46%	Y	13 (6.5%)
2	BSC	15.82	8.14%	Y	16 (8.0%)
3	3490 W. College, LLC	11.11	5.72%	N	12 (6.0%)
4	BSC	47.00	24.18%	Y	47(23.5%)
5	BCPOA (does not vote or pay assessments)	4.992	N/A	N	N/A
6	Deaven Partnership	5.723	2.94%	N	6 (3%)
7	Far and Sure LLC	19.99	10.28%	N	20 (10.0%)
8	BSC	6.715	3.45%	Y	7 (3.5%)
9R	CME Investments LLC	7.033	3.62%	N	8 (4.0%)
10R	Boyd State Bellefonte LLC	4.001	2.06%	N	5 (2.5%)
11	BSC	5.899	3.04%	Y	6(3.0%)
12	BSC	14.12	7.27%	Y	15(7.5%)
13	BCPOA (does not vote or pay assessments)	9.419	N/A	N	N/A
14	BSC	44.40	22.84	Y	45(22.5%)
Totals		194.361	100%		200