

**First Reading: 07/24/13**  
**Amended: 08/14/13**  
**First Reading: 08/14/13**  
**Defeated 3-6: 08/29/13**

**COUNTY OF LEHIGH, PENNSYLVANIA**  
**COMMISSIONERS BILL 2013-37**  
**SPONSORED BY COMMISSIONER McCARTHY**  
**REQUESTED DATE: JULY 8, 2013**  
**ORDINANCE NO. 2013-**

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**AUTHORIZING EXEMPTIONS, DEDUCTIONS, ABATEMENTS AND CREDITS FOR REAL PROPERTY, EARNED INCOME TAX, NET PROFITS, MERCANTILE AND BUSINESS PRIVILEGE TAXES ON COURT STREET, IN THE CITY OF ALLENTOWN, DESIGNATED AS A PORTION OF A PROPOSED KEYSTONE OPPORTUNITY EXPANSION ZONE (“KOEZ”), IN ORDER TO FOSTER ECONOMIC OPPORTUNITIES, STIMULATE INDUSTRIAL, COMMERCIAL, AND RESIDENTIAL IMPROVEMENTS AND PREVENT PHYSICAL AND INFRASTRUCTURE DETERIORATION WITHIN AN AREA OF THE CITY OF ALLENTOWN, COMMONWEALTH OF PENNSYLVANIA, UPON CERTAIN TERMS AND CONDITIONS**

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**WHEREAS**, the County of Lehigh Pennsylvania recognizes the need to encourage investment in a defined geographical area of the City of Allentown, as identified in Attachment “A” (“Proposed KOEZ”), that is experiencing distress characterized by one or more of the following: high unemployment, low investment of new capital, blighted conditions, underutilized, obsolete or abandoned industrial commercial and residential structures, deteriorated tax base; and

**WHEREAS**, the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act (Act of October 6, 1998, P.L. 705, No. 92, 73 P.S. §§820.101-820.1309, as amended), (hereinafter referred to as the “Act,”) authorizes political subdivisions to apply to the Pennsylvania Department of Community and Economic Development (DCED) for designation of an area within the

respective political subdivision as a KOEZ granting exemptions, deductions, abatements or credits from all local taxes identified in the Act; and

**WHEREAS**, approval of benefits provided in the Act will result in improving the economic, physical, and social conditions within the Proposed KOEZ by stimulating existing businesses employment, creating new employment and diminishing blight; and

**WHEREAS**, it is expected that increased private and public-sector investors will reverse the disinvestment and conditions of blight within the Proposed KOEZ by the time of its termination; and

**WHEREAS**, in accordance with the purposes of the Act, it is the intention of the County of Lehigh to designate 333 Court Street, Allentown, Pennsylvania, as identified in Attachment "A" as a KOEZ; and

**WHEREAS**, pursuant to section 820.310 of the Act, in exchange for approval of the establishment of the Proposed KOEZ, a Payment In Lieu of Taxes (PILOT) Agreement as set forth in Attachment "B" has been proposed by 333 Court Street, LLC of 40 North Harbor Park Drive, Port Washington, New York 11050 (Current Owner), and Adelaide Mill, LLC of 1800 Washington Boulevard, Baltimore, Maryland 21230 (Developer/Purchaser) and the County accepts this proposed PILOT Agreement; and

**WHEREAS**, the Proposed KOEZ, when aggregated with other qualifying parcels, is not less than ten (10) acres but not more than three hundred fifty (350) acres in the aggregate; and

**WHEREAS**, the Proposed KOEZ is comprised of a parcel which is deteriorated, underutilized or unoccupied.

**NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY  
THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH,  
PENNSYLVANIA, THAT:**

1. The foregoing Whereas clauses are incorporated herein as if set forth in their entirety.
2. Real Property Tax on the Proposed KOEZ as identified in Attachment "A" is 100% exempt in accordance with the provisions and limitations hereinafter set forth in accordance with the Act, such exemption to begin on January 1, 2014 and to terminate December 31, 2023.
3. Earned Income and Net Profits Taxes; Business Privilege and Mercantile Taxes. The County of Lehigh also waives business gross receipts tax for operations conducted by a qualified business, earned income received by a resident, and net profits of a qualified business attributable to business activity conducted within said zone, such exemption to begin on January 1, 2014 and to terminate on December 31, 2023.
4. The provisions of the Act not herein enumerated, shall, nevertheless, be incorporated as part of this Ordinance by reference.
5. This Ordinance shall become effective in ten (10) days after enactment, conditioned upon the approval of the application by DCED.
6. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Ordinance.

7. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.

8. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.

**DEFEATED** this 28th day of August, 2013, by the following vote:

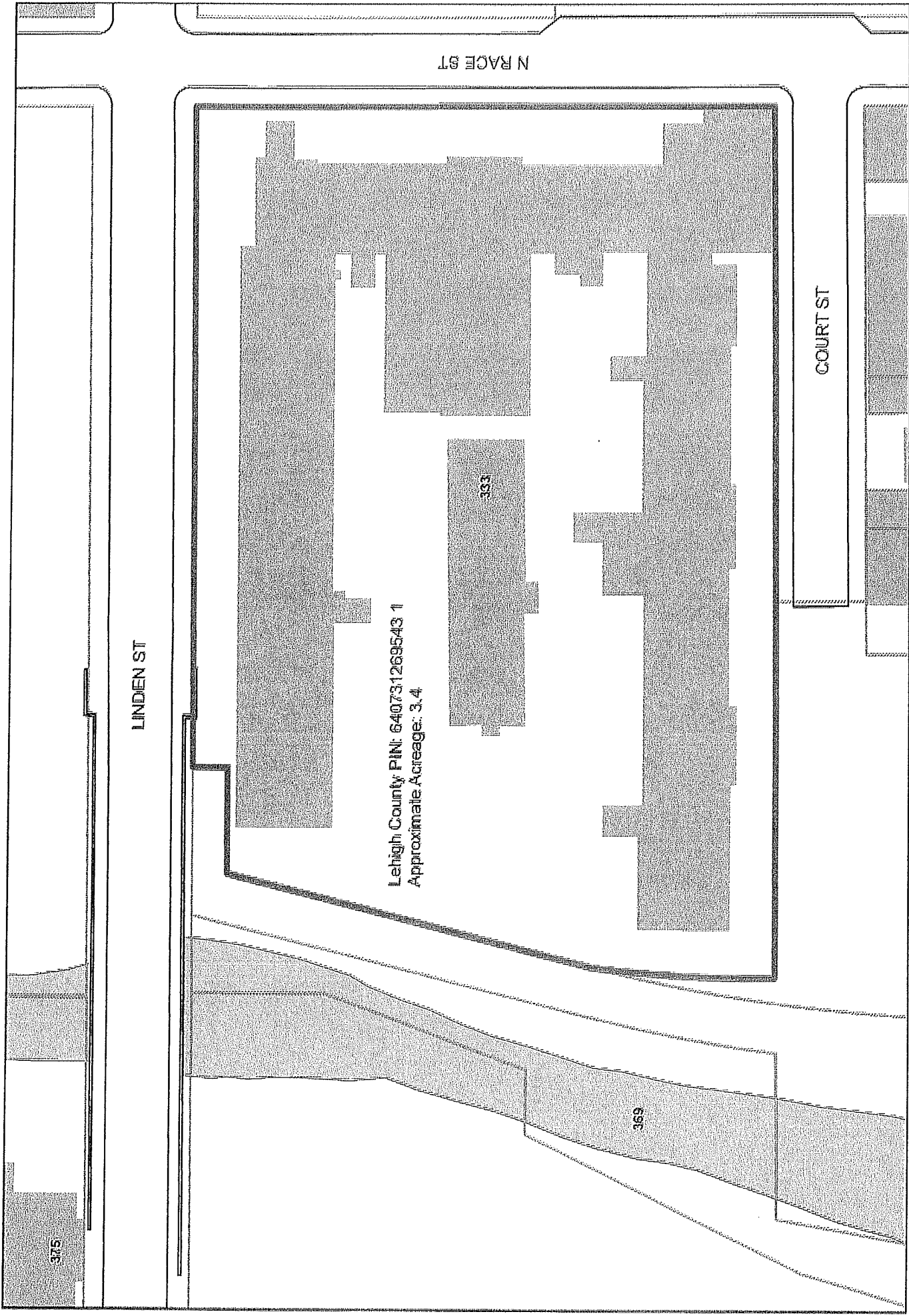
<u>Commissioners</u>	<u>AYE</u>	<u>NAY</u>
Thomas C. Creighton, III		X
Percy H. Dougherty	X	
David S. Jones, Sr.	X	
Daniel K. McCarthy	X	
Vic Mazziotti		X
Brad Osborne		X
Scott Ott		X
Lisa Scheller		X
Michael P. Schware		X

ATTEST:   
CLERK TO THE BOARD OF COMMISSIONERS

DEFEATED this 28th day of August, 2013.

\_\_\_\_\_  
Matthew T. Croslis  
Lehigh County Executive

ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.



LINDIEN ST

Lehigh County PIN: 640731269543 1  
 Approximate Acreage: 3.4

N RACE ST

COURT ST

375

369

333



**333 Court Street  
 Attachment "A"**



**Legend**

- Proposed KOEZ
- Buildings



1 inch = 70 feet  
 0 40 80 160 Feet

## AGREEMENT TO MAKE PAYMENTS IN LIEU OF TAXES

THIS AGREEMENT ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the County of Lehigh, located in the Commonwealth of Pennsylvania ("County") and 333 Court Street, LLC, of 40 North Harbor Park Drive, Port Washington, New York 11050 (the "Current Owner") and Adelaide Mill, LLC of 1800 Washington Boulevard, Baltimore, Maryland 21230 (the "Developer").

### BACKGROUND

A. The Current Owner owns real property in the City of Allentown, Lehigh County, Pennsylvania, which real property is more specifically identified in Attachment "A" attached hereto (the "Property").

B. Developer possesses an equitable interest in the Property by way of an executed Agreement of Sale with the Current Owner.

C. The Current Owner and Developer are applying to the Commonwealth of Pennsylvania (the "Commonwealth") for the designation of the Property as a proposed Keystone Opportunity Expansion Zone ("KOEZ"), thereby making such designated area of the Property eligible for certain state and local tax exemptions, deductions, abatements and credits (collectively, the "Benefits").

D. The Current Owner and Developer are aware of the needs of the County and recognize the services and benefits the County provides. In recognition and consideration of the services provided by the County, the Current Owner and Developer are willing to make an annual payment in lieu of taxes ("PILOT Payment") to the County with respect to the Property located within the KOEZ.

E. This Agreement is being entered into by the parties in connection with the adoption by the County of Ordinance No. 2013- \_\_\_\_ (the "Ordinance") attached hereto as Attachment "B" and authorizing the designation of Three and Four Tenths (3.4) Acres, more or less, to be a Keystone Opportunity Expansion Zone, which are more fully described in Attachment "A". This Agreement will become effective, and binding upon the Current Owner and Developer of the Property, without limitation, only upon the Commonwealth's approval of the proposed KOEZ.

NOW THEREFORE, the County, the Current Owner and the Developer, in consideration of the mutual undertakings set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound thereby, covenant and agree as follows:

## AGREEMENTS

### 1. Annual Payments in Lieu of Taxes.

(a) Commencing on the date the Commonwealth approves the establishment of the KOEZ (the "Commencement Date") and during the Term of this Agreement (as hereinafter defined), the party who possesses legal title to the Property (the "Record Owner") shall make a PILOT Payment for each 12-month period from January 1 through December 31 (each, "Tax Year") to the County (the "Annual Payment") in the amount of \$4,694.00, which is not in excess of 110% of the amount of real property taxes payable to Lehigh County for the 2013 tax year.

(b) Each Annual PILOT Payment to the County with respect to each Tax Year shall be made no later than September 1 of such Tax Year.

(c) The Record Owner acknowledges and agrees that the Annual PILOT Payments provided for herein shall be unrestricted upon receipt by the County.

(d) Nonetheless, except as otherwise required or authorized by law, the PILOT Payments may not be in excess of 110% of the amount of real property taxes payable to the County for the tax year immediately prior to the year in which the designation or extension is granted. However, the limitation on Annual Payment set forth under this paragraph may increase by the percentage increase in the said payments that would occur if the property was not exempt from the County real property taxes. The Annual Payment shall increase or decrease by the equivalent change in the County Millage Rate for the Tax Year as if the property was not exempt from local taxes.

(e) Payments may not be increased for the duration of the designation or expansion based on an increase in the assessed value of the Property due to improvements to the Property made subsequent to designation of the KOEZ in question.

2. Term. The term of this Agreement (the "Term") shall commence on the Commencement Date and shall continue until the earliest to occur of the following events: (a) such date as the Benefits expire or otherwise become unavailable (which shall be no later than December 31, 2023); or (b) the termination of this Agreement by joint written action of the Record Owner and the County.

3. Late Payments; Remedies. The Record Owner may impose a late charge on an Annual Payment in the event that the Record Owner fails to make all or any portion of such Annual Payment to the County by September 1 of the applicable Tax Year. The late charge shall equal the late charge imposed by the County with respect to late payments of taxes for such Tax Year. In the event the Record Owner to make an annual payment, the County may pursue any other remedy in law or equity to which the County may be entitled. The County shall be entitled to recover interest, reasonable attorney's fees and/or costs associated with the collection of any portion of the Annual Payment.

4. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The Record Owner agrees that it will, during the term of this Agreement, furnish any prospective purchaser with a copy of this Agreement no later than ten business days after commencement of negotiations for the sale of the Property. Notwithstanding the above, the Record Owner may not assign its obligations or responsibilities under this Agreement to a third party without the prior approval of the County, which will not be unreasonably withheld. Upon such approval and subsequent assignment, the County shall look solely to the assignee for the payment obligations under this Agreement.

5. Notices. Any notice required or permitted to be given hereunder shall be sufficient if in writing and if sent to a party by internationally nationally recognized overnight courier service (e.g., USPS, UPS or Federal Express), costs prepaid, with proof of deliver, to the address for the party provided below (or to such other address as a party may designate by notice to the other parties). A party may change its notice address by giving the other party written notice of the new address in the manner set forth above.

If to the County:  
County of Lehigh  
Attn: County Fiscal Officer  
17 South 7<sup>th</sup> Street  
Allentown, PA 18101

With a copy to:  
County of Lehigh  
Attn: County Solicitor, Dept. of Law  
17 South 7<sup>th</sup> Street  
Allentown, PA 18101

If to the Current Owner:  
333 Court Street, LLC  
40 North Harbor Park Drive  
Port Washington, New York 11050

If to the Developer:  
Adelaide Mill, LLC  
1800 Washington Blvd.  
Baltimore, MD 21230

With a copy to:  
Rob Jacobs, Esq.  
8 Centre Square  
Easton, PA 18042  
Email: rhjlaw@gmail.com



6. Severability. Each provision of this Agreement shall be deemed severable from each other provision of this Agreement, and in the event any provision or portion of this Agreement shall be determined to be illegal or unenforceable by any court or other governmental body having jurisdiction, then the illegal or unenforceable portion of this Agreement shall be severed from the balance of this Agreement and this Agreement shall be deemed amended conforming to the order or other determination to accomplish the purposes of this Agreement.

7. Miscellaneous. This Agreement represents the entire agreement between the parties hereto and shall not be modified in any manner except by written instrument executed by the parties. This Agreement and all disputes arising under this Agreement shall be governed, construed and decided in accordance with the laws of the Commonwealth of Pennsylvania. The parties do not intend to create, and nothing contained in this Agreement shall be construed as creating, a joint venture arrangement or partnership between the County and the Record Owner. Nothing in this Agreement expressed or implied, is intended or shall be construed to confer upon or give any person, firm, corporation, or legal entity, other than the parties, any rights, remedies, or other benefits under or by reason of this Agreement, and no party is an intended third party beneficiary of this Agreement. This Agreement may be executed simultaneous in multiple counterparts, each of which shall be deemed an original but all of which taken together shall constitute but one and the same instrument. This Agreement, either in full or in part, can be mutually amended by joint written action of the Record Owner and the County.

8. Recordation. This Agreement shall be recorded in the Office of the Clerk of Judicial Records, Recorder of Deeds Division of Lehigh County and the covenants contained herein shall be covenants running with the Property.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed as of the date first above written.

COUNTY OF LEHIGH

By: \_\_\_\_\_

Matthew T. Croslis  
County Executive

333 COURT STREET, LLC

By: \_\_\_\_\_

\_\_\_\_\_

Print Name

ADELAIDE MILL, LLC

By: \_\_\_\_\_

\_\_\_\_\_

Print Name