

MEMORANDUM OF UNDERSTANDING
(Township Western Greenway)

Parties:

LOWER MACUNGIE TOWNSHIP

and

JAINDL REALTY, L.P.

JAINDL LAND COMPANY

DAVID M. JAINDL, INDIVIDUALLY

Dated: April 29, 2010

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MEMORANDUM OF UNDERSTANDING
(Township Western Greenway)

THIS MEMORANDUM OF UNDERSTANDING is entered into this 29th day of April, 2010 by and among Lower Macungie Township, a duly incorporated First Class Township located in Lehigh County, Pennsylvania, having an address of 3400 Brookside Road, Macungie, PA 18062, and David M. Jaindl, an adult individual, Jaindl Realty, L.P., a Delaware limited partnership and Jaindl Land Company, a Pennsylvania business corporation, all having an address of 3150 Coffeetown Road, Orefield, Pennsylvania 18069.

NOW, THEREFORE, Jaindl and the Township, intending to be legally bound hereby, do hereby promise, covenant and agree as follows:

1. **DEFINITIONS**

1.1 Applicants. David M. Jaindl and Jaindl Realty, L.P.

1.2 Applications. The Conditional Use Applications, Sketch Plan Applications and Preliminary Plan Applications, all of which refer to the Quarry Development.

1.3 Authorized Infrastructure. As to both Future Dedicated Open Space and Greenway Preservation Lands, shall include: underground utilities (including both public and private services), overhead utilities along existing roads and across creeks, wetlands mitigation (anywhere in the Greenway Preservation Lands, but in the Future Dedicated Open Space only to the East of Smith Lane and in the 100 year floodplain area West of Smith Lane), drainage swales, improvements to existing roads including dedication of right-of-way and highway easements, and excavation in the floodplain to the extent required for roadway improvements. With respect to Greenway Preservation Lands, and not the Future Dedicated Open Space, Authorized Infrastructure also shall include: ponds, pipes, stormwater BMP (best management practices) structures, outlet structures, conduits and other stormwater structures and facilities of any type associated with the management of stormwater or stormwater quality, including without limitation for the purposes of stormwater detention, retention, irrigation, infiltration and other forms of

stormwater management or addressing stormwater quality. Authorized Infrastructure is intended to include stormwater management and quality benefitting development of lands that are offsite to the Future Dedicated Open Space and the Greenway Preservation Lands. In the Greenway Preservation Lands, in order to provide a more naturalized appearance around any ponds, the ponds shall not include concrete low flow channels or cable concrete. The use of alternative fence materials such as post and rail fence with mesh infill rather than chain link fence should be used in the Greenway Preservation Lands if a fence is utilized. The use of shallow depths, curvilinear sides with varying side slopes and heights of berms, and native plantings other than mowed turf grass for all or portions of the ponds are encouraged and are to be used in the Greenway Preservation Lands to the extent they are practical and reasonable. Finally, Authorized Infrastructure for both Future Dedicated Open Space and Greenway Preservation Lands also shall include signage in connection with the naming rights for the Greenway Preservation Lands and/or Future Dedicated Open Space consistent with Articles 12 and 13, as applicable.

1.4 Conditional Use Applications (and each individually, a “Conditional Use Application”). All of the following relative to the Quarry Development: Applicants filed a Conditional Use Application on September 22, 2009 and amended that application with a filing on October 12, 2009; Mr. Jaindl filed three (3) Conditional Use Applications and Jaindl Realty filed one (1) Conditional Use Application on October 12, 2009; and Mr. Jaindl filed one Conditional Use Application on October 19, 2009.

1.5 DEP. The Pennsylvania Department of Environmental Protection.

1.6 Exhibits. All Exhibits to this MOU, with the following being a list of those Exhibits:

Exhibit “A” – Continuance Letter of Joseph A. Zator

Exhibit “B” – The Pidcock Company Plan E-342

Exhibit “C” – Zoning Ordinance Amendment with maps

Exhibit “D” – SALDO Amendment

Exhibit “E” – List of Waivers

Exhibit “F” – The Pidcock Company Plan E-346

1.7 Future Dedicated Open Space. Those certain lands owned by Mr. Jaindl located generally south of Mertztown Road, consisting of 166 +/- acres, less and excepting the Homestead Lot and Smith Lane Homestead, and identified on Exhibit “B” by hatching and labeled as Tract 4, and consisting, with the exception of such homestead lots, of all of the following properties: Lehigh County PIN No. 545490319613 known as 8992 Mertztown Road, Lehigh County PIN No. 545490759950 known as 8900 Mertztown Road, and Lehigh County PIN No. 545399138762 known as 2276 Smith Lane, and a portion of the following properties: Lehigh County PIN No. 546400917375 known as 8688 Mertztown Road and Lehigh County PIN No. 546329176334 known as 8478 Mertztown Road.

1.8 Governing Submission Date. January 14, 2011 if the zoning ordinance and map amendments and SALDO amendments contemplated by Articles 5 and 7 are adopted by the Township on or before June 3, 2010. If adoption of such ordinances occurs after June 3, 2010, then the Governing Submission Date shall be that date following January 14, 2011 that is the same number of days following June 3, 2010 as the adoption of all the ordinances contemplated by Articles 5 and 7.

1.9 Greenway Preservation Lands. The following lands:

- a. tracts of approximately 37 +/- acres and 27 +/- acres, respectively, located on opposite sides of Mertztown Road depicted and labeled on Exhibit “B” as “Fred J. Jaindl Proposed Preservation”, being a portion of Lehigh County PIN No. 545368076702 known as Ash Lane and being Lehigh County PIN No. 545367260583 known as Mertztown Road;
- b. tract of approximately 61 +/- acres located along Mertztown Road depicted and labeled on Exhibit “B” as “David M. Jaindl Proposed Preservation”, a portion of which lies in Upper Macungie Township and a portion of which lies in Longswamp Township, being Berks County Map PIN No. 548300581489; and
- c. lands of approximately 26 +/- acres, less and excepting the Homestead Lot and the Smith Lane Homestead, and located south of the Future Dedicated Open Space depicted and labeled on

Exhibit “B” as “Tract 5”, being a portion of the following properties: Lehigh County PIN No. 546400917375 known as 8688 Mertztown Road and Lehigh County PIN No. 546329176334 known as 8478 Mertztown Road; it is noted, however, that this area will be part of the same lot or lots as the lands located to its south which is depicted and labeled on Exhibit “B” as Tract 1, and will be zoned HI-SC as contemplated by Article 5 hereof.

1.10 Purposes Intended for Greenway Preservation Lands. Agriculture, open space, passive recreation, parkland, wildlife habitat, nature preserve, and Authorized Infrastructure.

1.11 Homestead Lot. A stone house and barn, together with approximately 3-4 acres surrounding those structures, which shall be subdivided, excluded from the Future Dedicated Open Space and Greenway Preservation Lands, and retained by Mr. Jaindl as described in Article 13.

1.12 Impact Fee Ordinance. Lower Macungie Township Ordinance #2009-15, known as the Lower Macungie Township Transportation Impact Fee Ordinance, or any future impact fee ordinance adopted pursuant to Article 5-A of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10501-A, *et seq.*

1.13 Jaindl. Mr. Jaindl, Jaindl Realty and JLC, collectively or individually, as appropriate based on context.

1.14 Jaindl Affiliate. Mr. Jaindl, Mr. Jaindl’s wife, any one or more children of Mr. Jaindl and any corporation, limited liability company, general partnership, limited partnership, trust or other non-natural person in which any one or more of the foregoing persons have a controlling interest for decision making.

1.15 Jaindl Commitment. The following three (3) commitments of Applicants as explained in fuller detail later in this MOU:

- a. withdrawal and termination with prejudice of the Applications for the Quarry Development;
- b. the offer of dedication to the Township of the Future Dedicated Open Space in accordance with Article 13; and

c. Applicants providing for the Greenway Preservation Lands in accordance with Article 12.

1.16 Jaindl Realty. Jaindl Realty, L.P., a Delaware limited partnership.

1.17 JLC. Jaindl Land Company, a Pennsylvania corporation.

1.18 Legal Challenge. Any procedural, substantive or other type of legal challenge filed in any forum, whether it be in court or with any board, body or agency at local, state, or federal level, with respect to any aspect of this MOU which was adopted by, acted upon by, or the basis for action or inaction by or on behalf of the Township, including without limitation, any action of the Township in fulfilling one or more conditions precedent or any actions of the Township or Jaindl in furtherance of what is contemplated by this MOU. By way of example and for clarity, but without limitation, a Legal Challenge shall include the following: procedural or substantive challenge to any ordinance enacted by the Township that has been contemplated by this MOU; a challenge to any waiver of traffic impact fees granted in connection with subdivision or land development on any part of the Subject Properties or Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate; and a challenge to any preliminary opinion issued by the Township zoning officer pursuant to MPC § 916.2 with respect to a subdivision or land development on any part of the Subject Properties or Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate.

1.19 MOU. This Memorandum of Understanding.

1.20 MPC. The Pennsylvania Municipalities Planning Code, 53 P.S. § 10101, *et seq.*

1.21 Mr. Jaindl. David M. Jaindl, an adult individual.

1.22 PennDOT. Pennsylvania Department of Transportation.

1.23 PPL Property. The 5.9 +/- acre property currently owned by PPL Electric Utilities Corporation located at 7999 Quarry Road, Lehigh County PIN Number 546359560260.

1.24 Preliminary Plan Applications. Preliminary plan applications filed by the Applicants relative to the Quarry Development on October 28, 2009.

1.25 Quarry Development. The extractive and quarrying operations, along with the subdivision of four (4) residential lots and one (1) residual lot on a total of

approximately 696 acres located in Western Lower Macungie Township and known as Jaindl Western Properties, as contemplated by the Applications.

1.26 Quarry Lands. Lands of Mr. Jaindl and Jaindl Realty that are the subject of the Applications. The Quarry Lands include:

- a. 8899 Mertztown Road
Lehigh County PIN Number 545492191847
33.443 +/- acres
- b. 8741 Mertztown Road
Lehigh County PIN Number 546403301298
83.728 +/- acres
- c. 2276 Smith Lane
Lehigh County PIN Number 545399138762
96 +/- acres
- d. 8688 Mertztown Road
Lehigh County PIN Number 546400917375
130.05 +/- acres
- e. 8478 Mertztown Road
Lehigh County PIN Number 546329176334
102.6842 +/- acres
- f. 3081 Smith Lane
Lehigh County PIN Number 546327753506
53.87 +/- acres
- g. 8673 Longswamp Road
Lehigh County PIN Number 546336062739
16.53 +/- acres
- h. 8343 Spring Creek Road
Lehigh County PIN Number 546337491541
78.3 +/- acres
- i. 8332 Spring Creek Road
Lehigh County PIN Number 546349492773
38.95 +/- acres
- j. 8338 Spring Creek Road
Lehigh County PIN Number 546349608667
21.7 +/- acres

- k. 8352 Spring Creek Road
Lehigh County PIN Number 546348941698
16.58 +/- acres
- l. 8362 Spring Creek Road
Lehigh County PIN Number 546347789916
10.38 +/- acres
- m. 8992 Mertztown Road
Lehigh County PIN Number 545490319613
1.87 +/- acres
- n. 8900 Mertztown Road
Lehigh County PIN Number 545490759950
15.4141 +/- acres

1.27 SALDO. The Township Subdivision and Land Development Ordinance.

1.28 Sketch Plan Applications (and each individually, a Sketch Plan Application). All of the following relative to the Quarry Development: Applicants filed a Sketch Plan Application on September 22, 2009 and amended that application with a filing on October 12, 2009; Mr. Jaindl filed three (3) Sketch Plan Applications and Jaindl Realty filed one (1) Sketch Plan Application on October 12, 2009; and Mr. Jaindl filed one Sketch Plan Application on October 19, 2009 being a “Sketch Plan Application”.

1.29 Smith Lane Homestead. A two story masonry dwelling and multiple sheds, together with approximately two (2) to three (3) acres surrounding those structures, which shall be subdivided, excluded from the Future Dedicated Open Space and Greenway Preservation Lands, and retained by Mr. Jaindl as described in Article 13.

1.30 Spring Creek Adjoiners. The following parcels of land adjacent to certain of the Quarry Lands located east of Spring Creek Road depicted and labeled on Exhibit “B” as “Spring Creek Adjoiners (3 Tracts)”:

- a. The PPL Property.
- b. 23 +/- acres of land owned by Althea M. Walbert, Lehigh County PIN No. 546358630254 known as 8009 Quarry Road.
- c. 1.8366 +/- acres of land owned by Peter H. Kells, Lehigh County PIN No. 546348272145 known as 8342 Spring Creek Road.

1.31 Subject Properties. The following properties owned or controlled by one or more persons comprising Jaindl:

- a. The Quarry Lands.
- b. 14 net acres (exclusive of existing and future road right-of-way) located adjacent to PA Route 100, being a portion of the former Romig tract, record title for which currently is in the name of East Penn School District, being part of Lehigh County PIN No. 546480379486 and the lands described by deed recorded at Doc. ID 7407559, generally as shown on Exhibit “B” and labeled “Former Romig – Route 100 Tract”.
- c. 37 +/- acres west of Butz Road owned by David M. Jaindl, being part of Lehigh County PIN No. 545470990647 and described by deeds recorded at Document ID Nos. 727321, 727323, and 727324, known as 9229 Mertztown Road, depicted and labeled on Exhibit “B” as Tract 3.

1.32 TIF Amendment. Amendment of the Impact Fee Ordinance as described in Section 9.2.

1.33 Total Projected Traffic Volume. That traffic volume as defined in Section 6.1.

1.34 Township. The Township of Lower Macungie.

1.35 Withdrawal Date. The date six (6) months after the Governing Submission Date.

1.36 Zoning Ordinance. The Lower Macungie Township Zoning Ordinance.

2. **BACKGROUND**

2.1 Applicants filed the Applications relative to the Quarry Development prior to the Township enacting Ordinance 2009-13, an amendment to the Zoning Ordinance that, if applicable, would have precluded the Quarry Development.

2.2 The Applications together relate to proposed extractive and quarrying operations on the vast majority of approximately 696 acres owned by the Applicants and located in western Lower Macungie Township.

2.3 The Township and Jaindl anticipate the possibility of lengthy and acrimonious litigation regarding the Quarry Development, and are interested in settling their differences without resorting to litigation.

2.4 The Township has requested that Jaindl consider alternatives to the Quarry Development, and Jaindl has agreed, subject to fulfillment of each condition precedent described in this MOU being fully met, to withdraw its Quarry Development.

2.5 Over the past 10 or more years, on several occasions Mr. Jaindl had suggested to Township elected officials and other Township representatives, land use alternatives involving the property identified in this MOU as the Quarry Lands. These discussions included Mr. Jaindl proposing a substantial “greenway”. However, no action was taken by the Township to further Mr. Jaindl’s proposals. Mr. Jaindl believes that now is an appropriate time to consider pursuing these land use alternatives, including a very substantial “greenway”.

2.6 As a direct result of the cooperative discussions between Jaindl and the Township, following the satisfaction of the conditions precedent described in this MOU, Jaindl will commit to the preservation of open space through a combination of open space dedicated to the Township and a preserved “greenway”. Such a commitment by Jaindl, together with lands already preserved and owned by others, will combine to form a “greenway” of approximately 1,000 acres. Such a “greenway” will not be created without the execution of this MOU and fulfillment of its intent.

2.7 The Township believes that it is in the best interest of the Township and its citizens that the Quarry Development be terminated and that such a “greenway” be provided for the benefit of generations to come, and that the combination of the foregoing serves an overriding public interest that will benefit the community.

2.8 The Township believes that the actions contemplated by the Township pursuant to this MOU constitute sound land use planning.

2.9 The Township has been considering the rezoning of the Spring Creek Adjoiners separate and apart from this matter, and believes that now is an appropriate time to rezone them to the new HI-SC Zoning District. Jaindl agrees with this rezoning of the Spring Creek Adjoiners.

2.10 The Township believes that the combination of the foregoing serves an overriding public interest that will benefit the community.

2.11 The parties acknowledge: that the Township has the right at anytime to choose to proceed no further with the steps contemplated as conditions precedent under this MOU; that at any time the Township acts in a manner consistent with fulfilling a condition precedent pursuant to this MOU, that it is doing so voluntarily, with deliberative thought and acting in the best interest of the Township; and that the Township has maintained, and by executing this MOU will continue to maintain, the Township's full right to exercise its lawful police power.

3. **STATUS OF APPLICATIONS**

3.1 The Township and Jaindl acknowledge and agree that the Applications have been duly and timely filed, and review and approval of the Applications are subject to and pursuant to the Township ordinances, including without limitation the Zoning Ordinance and SALDO, as they existed when the Applications were filed with the Township prior to the Township adoption of Ordinance 2009-13.

3.2 The Township and Jaindl acknowledge and agree that the Applications have been duly continued by the correspondence of Jaindl's legal counsel, Joseph A. Zator II, dated February 5, 2010, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A". The Township has agreed to the continuance as set forth on Exhibit "A".

3.3 The Township and Jaindl acknowledge and agree that Applicants have the right to pursue the Quarry Development at any time, consistent with the continuance letter at Exhibit "A". If Applicants elect to pursue the Quarry Development, it shall be reviewed for approval, to the extent review is required, by the various applicable boards, commissions, committees and agencies of the Township under the applicable Township codes, policies, ordinances and regulations governing when the Applications were filed with the Township.

4. **CONDITIONS PRECEDENT AND TOWNSHIP OBLIGATIONS**

4.1 As conditions precedent to Applicants withdrawing and terminating the Quarry Development with prejudice, the Township and Jaindl acknowledge and agree that there exist various conditions precedent, as nominally itemized below in this Article 4 and as set forth more fully hereinafter in this MOU. If all conditions precedent which come due prior to the Withdrawal Date have been completely and precisely fulfilled, then Jaindl shall withdraw and terminate with prejudice the Applications for the Quarry Development on the Withdrawal Date. Thereafter, all remaining conditions precedent and other conditions set forth in this MOU (collectively, “**Remaining Township Obligations**”) shall be deemed to be and continue as contractual obligations of the Township. Jaindl may enforce the Remaining Township Obligations at law or in equity, including without limitation injunctive relief, as determined by Jaindl in Jaindl’s sole discretion, and shall be entitled upon successful enforcement of those Remaining Township Obligations to the recovery from the Township of reasonable attorneys’ and experts’ fees.

4.2 Fulfillment of the conditions precedent and, after the Withdrawal Date, of the Remaining Township Obligations, includes the requirement that the Township shall have taken all steps and actions legally necessary or otherwise prudent to satisfy all conditions precedent and Remaining Township Obligations to the reasonable satisfaction of Jaindl, including providing to Jaindl and Jaindl’s legal counsel proof of the foregoing.

4.3 Except as set forth in Article 10 below regarding approval of subdivision and land development plans, all actions of the Township in pursuing fulfillment of the conditions precedent and Remaining Township Obligations shall be at Township expense and not chargeable to the Quarry Development or to any other development of Jaindl.

4.4 The conditions precedent and, after the Withdrawal Date, the Remaining Township Obligations, are fulfillment by the Township of the following:

- a. Adoption of zoning ordinance/map amendments pursuant to Article 5 below.
- b. Adoption of SALDO amendments pursuant to Article 7 below.
- c. Issuing and advertising a favorable preliminary zoning opinion(s) pursuant to Article 8 below.

- d. Waiver of traffic impact fees and other action required pursuant to Article 9 below.
- e. Approval of subdivision and land development plans and other requirements pursuant to Article 10 below.
- f. Absence of or successful defense against Legal Challenges pursuant to Article 11 below.
- g. Intentionally Deleted.

4.5 For ease of reference, the subsequent provisions of this MOU only refer to the conditions precedent and not the Remaining Township Obligations. Nevertheless, all references to the conditions precedent shall be references to the Remaining Township Obligations in accordance with the terms of this Article 4.

5. **ZONING ORDINANCE/MAP AMENDMENTS**

5.1 A condition precedent to the Jaindl Commitment is that not later than June 3, 2010 the Township lawfully adopt an amendment to the Township Zoning Ordinance and zoning map in form and substance as set forth at Exhibit “C” hereto.

5.2 The zoning ordinance/map amendment at Exhibit “C”, inter alia, accomplishes the following: establishes a new HI-SC Zoning District; establishes a new C-SC Zoning District; establishes a new UO (overlay) Zoning District; establishes a new APO (overlay Zoning District); modifies certain provisions of the presently enacted Township zoning ordinance; and modifies the Township zoning map with respect to the Subject Properties and the PPL Property.

5.3 The Township shall take all actions required by the MPC, the First Class Township Code and other applicable law to ensure the lawful adoption of the zoning ordinance/map amendment attached as Exhibit “C” hereto.

6. **PREPARATION OF TRAFFIC IMPACT STUDY.**

6.1 During the Township’s review of the preliminary/final subdivision or land development plan for the first submission involving any part of the Subject Properties and/or the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, Jaindl will submit to the Township for review and approval an overall traffic impact study including

projections for the traffic to be generated by the development of all of the Subject Properties and all of the Spring Creek Adjoiners. Jaindl will also submit a corresponding conceptual roadway improvements plan depicting the proposed improvements to the surrounding road network. The overall traffic impact study and the corresponding conceptual roadway improvements plan shall be in accordance with SALDO Appendix B and industry-accepted standards. The purpose of the Township's review and approval of the traffic impact study is to confirm that the surrounding road network, with the improvements identified on the conceptual roadway improvements plan, will have capacity for the traffic anticipated to be generated by the development of the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate. Upon mutual acceptance of the overall traffic impact study, the sum of the P.M. peak hour trips to be generated by the Subject Properties and the Spring Creek Adjoiners set forth in the traffic impact study shall be referred to as the "Total Projected Traffic Volume".

6.2 If the Township does not obtain all necessary permits and approvals necessary for the extension of Sauerkraut Lane as contemplated by Section 9.8(b) hereof so that Jaindl's obligation for this extension terminates, Jaindl will submit to the Township a revised overall traffic impact study and a corresponding conceptual roadway improvements for all of the Subject Properties and all of the Spring Creek Adjoiners pursuant to Section 6.1 hereof. Upon mutual acceptance of the revised overall traffic impact study, the "Total Projected Traffic Volume" shall be modified to equal the sum of the P.M. peak hour trips to be generated by the Subject Properties and the Spring Creek Adjoiners set forth in the revised overall traffic impact study.

6.3 During the Township's review of a preliminary/final subdivision or land development plan of any portion of the Subject Properties or the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate submitted after and differing from the development contemplated by the overall traffic impact study required by Section 6.1, Jaindl or the developer who has submitted such plan will submit to the Township for review and approval a supplemental traffic impact study that has been prepared in accordance with industry-accepted standards. Each supplemental traffic impact study shall include projections for the traffic to be generated by the development of that portion of the Subject Properties or the Spring Creek Adjoiners acquired by Jaindl or a Jaindl

Affiliate that is the subject of that particular plan submission. The purpose of the Township's review and approval of each supplemental traffic impact study is to measure the P.M. peak hour trips for each subsequent development against the Total Projected Traffic Volume and to determine if any additional perimeter road frontage improvements are required beyond those listed in the conceptual roadway improvements plan. The study area for each subsequent supplemental traffic impact study prepared for an individual subdivision or land development shall be limited to the roadways fronting the proposed development and its driveways.

6.4 With the exception of the traffic impact studies prepared and submitted in accordance with Sections 6.1 and 6.2 hereof, the Township shall not require any additional traffic impact studies pursuant to SALDO Appendix B (as anticipated to be adopted pursuant to this MOU) for the development of any portion of the Subject Properties or the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate. The requirements of this Article 6 are agreed to fulfill the requirements of SALDO Appendix B.

7. **SALDO AMENDMENTS**

7.1 A condition precedent to the Jaindl Commitment is that not later than June 3, 2010 the Township lawfully adopt an amendment to the Township SALDO in form and substance as set forth at Exhibit "D" hereto.

7.2 The Township shall take all actions required by the MPC, the First Class Township Code and other applicable law to ensure the lawful adoption of the SALDO amendment attached as Exhibit "D" hereto.

8. **PRELIMINARY ZONING OPINION(S)**

8.1 At any time prior to all other conditions precedent being met, Jaindl may elect to submit plans and other materials for any one or more of the Subject Properties and Spring Creek Adjoiners in order to obtain a preliminary opinion from the Township zoning officer pursuant to MPC §916.2. Jaindl agrees that such plans shall be prepared with the intention that the proposed use/development is in conformity with the Township's Zoning Ordinance as amended in accordance with Article 5 above.

8.2 If the Township zoning officer's preliminary opinion is that the proposed use/development complies with the Township zoning ordinance and zoning map, notice thereof shall be published by the Township consistent with the requirements of MPC §916.2, with such notice being first published not later than two (2) weeks following the zoning officer rendering a favorable preliminary opinion.

8.3 If the zoning officer's preliminary opinion is that the use/development fails to comply with the zoning ordinance or zoning map, the parties shall work together expeditiously to revise the zoning ordinance and/or zoning map, as applicable, consistent with the intent of this MOU and following which revision Jaindl will resubmit plans and materials for a new preliminary opinion by the zoning officer. Jaindl shall have the right to use the foregoing procedure until such time as a favorable preliminary opinion is obtained from the zoning officer so that the Township then pursues the procedure of Section 8.2 above; this procedure shall be completed not later than December 30, 2010.

8.4 If requested by the zoning officer or the Township, Jaindl agrees to meet with the zoning officer in advance of the Township's adoption of the Zoning Ordinance amendments described in Article 5 and review with the zoning officer a draft conceptual layout plan for the Subject Properties and Spring Creek Adjoiners which Jaindl anticipates submitting to the zoning officer for review under Section 8.1 following the adoption of those amendments.

8.5 It is a requirement as part of this condition precedent that the zoning officer render his preliminary opinion not later than fourteen (14) calendar days following receipt of the plans and materials from Jaindl.

8.6 The procedures detailed in this Article 8 shall apply only in connection with a request by Jaindl for a preliminary opinion from the Township zoning officer pursuant to MPC §916.2 submitted to the zoning officer within two (2) weeks following the adoption of the Zoning Ordinance amendment as contemplated by Article 5 above. Subsequent requests for such opinions, if any, shall not be governed by this Article 8.

9. **WAIVER OF TRAFFIC IMPACT FEES**

9.1 *Amount of Applicable Traffic Impact Fee.* It is a condition precedent to the Jaindl Commitment that the traffic impact fee under the Impact Fee Ordinance

required to be paid in connection with development on the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate shall be the lesser of: (i) one-thousand dollars (\$1,000.00) per P.M. peak hour trip, which was the interim traffic impact fee in effect at the time of the filing of the Applications, or (ii) the amount of any future impact fee adopted pursuant to Article 5-A of the MPC, 53 P.S. § 10501-A, *et seq.* If the Impact Fee Ordinance is repealed so that there is no longer a traffic impact fee applicable to any of the Subject Properties or any of the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, there shall be no traffic impact fee for any such properties and the provisions of this Article shall be inapplicable to any such properties.

9.2 *Amendment to Impact Fee Ordinance.* It is a condition precedent to the Jaindl Commitment that the Township shall lawfully adopt an amendment to the Impact Fee Ordinance to provide for a waiver or modification of the traffic impact fee. In order to accomplish this, the following TIF Amendment language shall be added to the Impact Fee Ordinance:

“The Board of Commissioners may waive or modify the requirements of one or more provisions of this ordinance when, in the judgment of the Board of Commissioners, alternative improvements can be demonstrated to provide equal or better results in furtherance of the policy set forth herein, provided that any such waiver or modification will not be contrary to the public interest.”

9.3 *Lawful Adoption of Amendment to Impact Fee Ordinance.* The Township shall take all actions required by the MPC, the First Class Township Code, and other applicable law to ensure the lawful adoption of the TIF Amendment.

9.4 *Extent of Traffic Impact Fee Waiver.* It is a condition precedent to the Jaindl Commitment that, consistent with the procedure set forth herein, the Township shall grant Jaindl a waiver from traffic impact fees that otherwise would have been due under the Impact Fee Ordinance with respect to the development of the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate. The procedure to be utilized in determining the extent of such waiver shall be as described below:

- a. During the Township's review of the preliminary/final subdivision or land development plan for the first submission involving any part of the Subject Properties and/or the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, Jaindl will submit to the Township an overall traffic impact study and a corresponding conceptual roadway improvements plan as set forth in Section 6.1 hereof. The Total Projected Traffic Volume per Section 6.1 shall be used to determine the extent of the waiver of traffic impact fees as set forth below and, for purposes of this Section 9.4, shall not be subject to further review or revision by any party hereto.
- b. The waiver of traffic impact fees required as a condition precedent in this Article 9 shall be applicable up to and including the Total Projected Traffic Volume for traffic generated by development of all of the Subject Properties and all of the Spring Creek Adjoiners. To the extent the number of P.M. peak hour trips for development of the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate exceeds the Total Projected Traffic Volume per Section 6.1, Jaindl (or the developer whose development causes the excess number of P.M. peak hour trips) shall pay a traffic impact fee in an amount equal to the number of excess P.M. peak hour trips above said Total Projected Traffic Volume times the traffic impact fee established in Section 9.1 hereof. The number of P.M. peak hour trips used to determine if a traffic impact fee is payable shall be determined by adding the P.M. peak hour trips per the supplemental traffic impact studies prepared pursuant to Section 6.3 and, if none was performed for a particular use, then by the overall traffic impact study if it is determined by the Township and Jaindl to be adequate; provided, however, that for uses that have been constructed and are in full operation, actual P.M. peak hour trips may be used to revise prior projected traffic counts.

9.5 *Waiver from Section 162-8 of Impact Fee Ordinance.* It is a condition precedent to the Jaindl Commitment that the Township shall grant Jaindl a waiver from Section 162-8 of the Impact Fee Ordinance under which the Township may require a special transportation study for certain new nonresidential developments with respect to the development of the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate.

9.6 *Waiver from Section 162-15 of Impact Fee Ordinance.* It is a condition precedent to the Jaindl Commitment that, with respect to the development of the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, the Township shall grant Jaindl a waiver from Section 162-15 of the Impact Fee Ordinance under which (i) an additional impact fee is imposed upon new developments which generate one thousand (1,000) or more new peak hour trips; (ii) an applicant for such a development shall perform a traffic analysis of development traffic impact on highways, roads, or streets outside the Transportation Service Area (as defined therein); and (iii) an applicant must mitigate the traffic impacts of development to maintain the predevelopment conditions after completion of the development on certain highways, roads, and streets, as set forth therein.

9.7 *Acknowledgement that Improvements Provide Equal or Better Results to the Township.* In granting the waivers contemplated by Sections 9.4, 9.5, and 9.6, the Township shall acknowledge that the roadway related improvements proposed for construction by Jaindl and contemplated by Section 9.8 below, constitute alternative improvements that provide equal or better results to the Township in furtherance of the policy set forth in the Impact Fee Ordinance and that such waivers are not contrary to the public interest.

9.8 *Anticipated Roadway Improvements.* The roadway improvements the parties anticipate being constructed in connection with development of the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate will be the following to the extent necessary for traffic predicted to be generated by development of the entirety of the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate:

- a. roadway improvements to PennDOT roads that are off-site to the Subject Properties and Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate; these roads include: PA Route 100, Spring Creek Road, Mertztown Road and Butz Road;
- b. extension of Sauerkraut Lane from the existing Quarry Road through the PPL Property to Spring Creek Road (including an at-grade crossing of the railroad tracks), provided that the Township, at its own expense, obtains all permits and approvals from Norfolk Southern Railroad, its successors and assigns, or such other entity or entities in control of permits and approvals for road crossings of railroad tracks, to enable this extension. Jaindl agrees to exercise commercially reasonable best efforts to cooperate with the Township in the Township's pursuit of such permits and approvals. To accomplish the foregoing Jaindl will prepare the sketch plan showing the proposed at-grade crossing; the Township will coordinate with Norfolk Southern Railroad in order to obtain, within 120 days of receipt of the sketch plan, a positive indication that the at-grade crossing is approvable upon submission of an acceptable design; Jaindl will then prepare the necessary plans for submission to Norfolk Southern Railroad; within six months following Jaindl providing such plans to the Township or by December 31, 2011, whichever is later, the Township will obtain all necessary permits and approvals for the at-grade crossing. If the Township does not obtain all necessary permits and approvals for the at-grade crossing within the times prescribed, the Jaindl obligation for this extension of Sauerkraut Lane shall automatically terminate and any security posted by Jaindl with the Township for such road (or portions thereof) which shall not be constructed shall be promptly returned to Jaindl. However, so long as the Township diligently pursued all necessary permits and approvals for the at-

- grade crossing, the failure of the Township to obtain such permits and approvals shall not be deemed to be a default under this MOU;
- c. extension of Sauerkraut Lane west of Spring Creek Road to Smith Lane or alternatively to another road constructed on the Subject Properties in order to provide access for the public to the Future Dedicated Open Space;
 - d. traffic signalization (if warrants are met) on Spring Creek Road at its future intersection with Sauerkraut Lane;
 - e. upgrade and possible widening (to a maximum of three lanes) of Quarry Road/Sauerkraut Lane from the PPL Property east to the existing signalized Route 100 – Sauerkraut Lane intersection, which upgrade will include the realignment commonly known as the Quarry Road realignment of Quarry Road on the East Penn School District property, subject, however, to the following parameters:
 - i. no additional road right-of-way will be required except dedication of right-of-way by the East Penn School District as is typically contemplated to the future/ultimate right-of-way as set forth in Township ordinances, and dedication of right-of-way for construction of the extension of Sauerkraut Lane from the existing signalized intersection at Route 100 westward to the point where it intersects Quarry Road, generally as depicted on Exhibit “B”;
 - ii. AMB Property Corporation (“**AMB**”) currently has an obligation under its land development plan approval to improve and repair a part of Quarry Road, and AMB has subsequently been discussing with the Township and East Penn School District to instead apply those funds that would be needed for AMB’s required roadwork, as well as additional funds, and to work in cooperation with East Penn School District and the Township for the proper two lane

and shoulder construction of Sauerkraut Lane from Route 100 to the access points of its development on Quarry Road. The Township shall, within twelve (12) months following the complete execution of this MOU, coordinate between AMB, the East Penn School District and Jaindl, and arrange for the construction of this extension of Sauerkraut Lane as contemplated in this paragraph, or the obligation of Jaindl for this extension of Sauerkraut Lane shall automatically terminate; such coordination within the twelve (12) month period shall include execution of documentation by which the construction of the extension of Sauerkraut Lane has been committed to and secured by letter of credit, escrow fund or other form of security acceptable to both Jaindl and the Township;

- iii. Jaindl will be responsible only for widening and improvements of Quarry Road/Sauerkraut Lane from the PPL Property to Route 100 to the extent not already anticipated to be an obligation or future obligation of either East Penn School District or AMB as described in subsection ii above. The maximum amount of widening will be to three (3) lanes, unless Jaindl elects to widen further, in Jaindl's sole discretion. In other words, Jaindl's commitment to the improvement of Sauerkraut Lane/Quarry Road from PA Route 100 to the PPL Property is limited to the expense above what it would take to reconstruct Sauerkraut Lane/Quarry Road with two lanes and shoulders from PA Route 100 to the PPL Property utilizing applicable Township standards. If any greater obligation is imposed on Jaindl, Jaindl shall have the right to reject such increased obligation and thereby terminate Jaindl's obligation for this extension of Sauerkraut Lane.

9.9 *No Obligation to Develop all of the Subject Properties or the Spring Creek Adjoiners.* Nothing in this MOU shall be construed as a requirement that Jaindl develop all or any part of the Subject Properties and/or any Spring Creek Adjoiners. Similarly, nothing in this MOU shall be construed as a requirement that Jaindl complete any of the improvements or dedicate any road right-of-way described in Section 9.8 unless such improvements and road right-of-way are included as part of one or more subdivision or land development plan approvals, or are part of one or more PennDOT highway occupancy permits required to be obtained in connection with such subdivision or land development approvals. However, nothing in this MOU modifies the existing obligation of Jaindl to complete the Farmington Hills III Phase 3 improvements to Route 100 at the intersection with Sauerkraut Lane, or any pre-existing arrangements regarding the pursuit by Jaindl and the East Penn School District of the Quarry Road realignment which are separate and apart from this MOU.

9.10 *Jaindl's Discretion to Construct Improvements in Advance.* In Jaindl's sole discretion, Jaindl may choose to construct (or provide for the construction of) roadway improvements in advance of their being needed for traffic generated by development of particular parts of the Subject Properties and Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate and may, in Jaindl's sole discretion, as a matter of planning, market conditions, or convenience, be included as part of developing less than all of the Subject Properties and the Spring Creek Adjoiners. Jaindl's entitlement to waivers based upon this Article 9 shall apply toward each subdivision and land development plan for all or any part of the Subject Properties and Spring Creek Adjoiners that have been acquired by Jaindl or a Jaindl Affiliate which has been submitted to the Township for review on or before December 30, 2030, regardless of when such development actually occurs and regardless of whether the developer is Jaindl, a Jaindl Affiliate, or a third party. No such entitlement to waivers shall apply for subdivision or land development plans which are submitted to the Township after December 30, 2030.

9.11 *Security for Roadway Improvements.* Except to the extent roadway improvements are under the jurisdiction of PennDOT, it is understood that as part of the various resolutions of approval for subdivisions and land developments those roadway improvements will be required to be secured in the manner contemplated by the MPC.

The various roadway improvements described in Section 9.8 will only be secured once and may be secured by a Jaindl entity, by a developer of a particular part of the Subject Properties or Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, or by a combination thereof.

9.12 *Agreement that Waivers are not Contrary to the Public Interest.* The Township agrees that the roadway improvements contemplated in Section 9.8 constitute alternative improvements that provide equal or better results to the Township in furtherance of the policy set forth in the Traffic Impact Fee Ordinance, and that such waivers are not contrary to the public interest. These roadway improvements are generally depicted on Exhibit “F” hereto.

9.13 *Inclusion of Waiver Entitlement in Resolutions of Approval and Plan Notes.* The waiver entitlement based upon this Article 9 shall be set forth in the resolutions of approval for and in plan notes on the record plan sheets for all subdivisions and land developments involving any part of the Subject Properties and Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate.

10. **APPROVAL OF SUBDIVISION AND LAND DEVELOPMENT PLANS**

10.1 Jaindl intends to submit subdivision and land development plans with respect to some or all of the Subject Properties, the Spring Creek Adjoiners and the Authorized Infrastructure.

10.2 The Township and Jaindl agree to cooperate reasonably and expeditiously with respect to processing, review, revision, resubmission, approval and recording of all such subdivision and land development plans. As part of such cooperation, the parties agree that no such plans shall be denied approval or recording because the Township did not receive the approval of Norfolk Southern Railroad by the time that all other approvals which are a prerequisite to recording of such plans have been received. The Township shall permit such plans to be recorded. If, following the recording of such plans, such road cannot be built because the Township has not obtained Norfolk Southern Railroad’s approval by the deadline specified in Section 9.8(b) above: (i) the Township shall take such action as necessary to permit a finding that, and shall find that, such plans do not fail because the Subject Properties and/or Spring Creek Adjoiners, or any portion thereof,

lack a second point of access because of the absence of that road or the road terminates in a cul-de-sac regardless of the length of the cul-de-sac, and (ii) Jaindl shall provide a copy to the Township of the traffic impact study submitted to PennDOT which removes the extension of Sauerkraut Lane across the Norfolk Southern rail line, or, if no such traffic impact study is required by PennDOT, a traffic analysis which removes such extension of Sauerkraut Lane.

10.3 A condition precedent to the Jaindl Commitment is that all subdivision and land development plans filed with the Township for review and approval on or before the Governing Submission Date shall be recorded in the Office of the Lehigh County Recorder of Deeds/Clerk of Judicial Records. Jaindl agrees that the recording of such plans shall be limited to those which are in conformity with the applicable provisions of the Zoning Ordinance and SALDO (as such ordinances are amended in accordance with and applied as provided in this MOU), any waivers included within this MOU or otherwise granted by the Board of Commissioners, and any variances granted by the Township Zoning Hearing Board.

10.4 Approval and recording of subdivision land development plans submitted after the Governing Submission Date shall not be a condition precedent to the Jaindl Commitment, however, the parties shall at all times proceed in the same manner as described in Section 10.2 above.

10.5 Intentionally Deleted.

10.6 In light of the intended development of the Subject Properties, the Township will reconsider its Road Classification Map, and in recognition of the new road system contemplated with development of the Subject Properties, and as a condition precedent to the Jaindl Commitment, shall waive any requirement to improve Ruth Road and Smith Lane along Jaindl frontages except: (i) as indicated on Exhibit "F" hereto; (ii) improved access to the Future Dedicated Open Space, either by way of Smith Lane or by a substitute reasonably acceptable to the Township; and (iii) to the extent a developer seeks and obtains plan approval that includes direct access to such roads. The Township shall revise its Bicycle and Pedestrian Pathway Plan as a condition precedent to the Jaindl Commitment to designate the extension of Sauerkraut Lane described in Sections 9.8.b and 9.8.c above as a Bike and Pedestrian Pathway, also known as a bicycle path route or

bicycle pathway, such that a bikeway may be installed as shown and described on Exhibit “F”. Furthermore, in connection with the roadway improvements described in Section 9.8 above, and as a condition precedent to the Jaindl Commitment, the Township shall vacate those portions of Ruth Road and Smith Lane marked for vacation on Exhibit “F”.

10.7 It is a condition precedent to the Jaindl Commitment that the offer of dedication to the Township of the Future Dedicated Open Space shall satisfy in the aggregate all open space, recreation land, and recreation fee requirements associated with subdivision and development of the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate. No additional, supplemental, or other open space, recreation land, and/or recreation fee shall be required in connection with or as the result of subdivision and/or land development of any or all of the Subject Properties and the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, whether such subdivision and/or land development was pursued/filed prior to, on, or after the Governing Submission Date, or any or all of the Authorized Infrastructure. The Township shall duly approve any and all waivers, and shall support Jaindl with regard to any requests for zoning relief before the Lower Macungie Township Zoning Hearing Board, which are necessary to effectuate the terms of this section.

10.8 As part of developing the Subject Properties, Jaindl shall be permitted to use the Greenway Preservation Lands and the Future Dedicated Open Space for the applicable Authorized Infrastructure.

10.9 It is a condition precedent to the Jaindl Commitment that: (i) the Township approve and execute the Township’s portion of all DEP sewage facilities planning modules or exemptions, as applicable, for development of the Subject Properties and Spring Creek Adjoiners, provided such modules or exemptions are in compliance with DEP regulations; and (ii) the Township revise its Act 537 Sewage Facilities Plan (if required) to permit the extension of public sanitary sewer service to the Subject Properties and Spring Creek Adjoiners. This Section does not alter the need of the developer to obtain any DEP or other outside agency approvals necessary for sewage facilities and sewer capacity.

10.10 While there may be other SALDO waivers/modifications necessary for preliminary/final approval of the subdivision and land development plans for the Subject

Properties and Spring Creek Adjoiners acquired by Jaindl, some waivers/modifications that will be necessary for preliminary/final land development approval are as set forth on Exhibit “E” hereto, and other needed waivers/modifications are inherent in the content of this MOU though not necessarily described as waivers/modifications per se. It is a condition precedent to the Jaindl Commitment that the Township duly approve all such waivers/modifications.

10.11 Intentionally Deleted.

10.12 a. All subdivision and land development plans for all Subject Properties and acquired Spring Creek Adjoiners submitted prior to December 30, 2030 shall be reviewed under the Township ordinances in effect on the date of the execution of this MOU as amended only by the zoning ordinance, zoning map, SALDO amendments and waivers, and traffic impact fee waivers contemplated by Articles 5, 6, 7, 9 and 10 of this MOU. As to each land development and/or subdivision plan relative to any part of the Subject Properties, Spring Creek Adjoiners, Authorized Infrastructure and any off-site improvements in connection with any or all of them, the protections and benefits afforded to development under this MOU and the five (5) year protection period set forth in MPC §508(4)(ii) shall be extended to December 30, 2030, or, if such plan was filed no more than five (5) years before December 30, 2030, it shall be extended to five (5) years from the date of preliminary plan approval of such plan even though such five (5) years extends beyond December 30, 2030.

b. The extension of this protective period shall be reflected in the Township Board of Commissioners’ resolution of approval for each such subdivision and land development, and also shall be set forth in a plan note on the record plan sheet for each such subdivision and land development that includes any part of the Subject Properties or the Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate. As to non-residential lands for which land development plans have not yet been submitted by the Governing Submission Date, but for which subdivision plans have been submitted, such protection shall be set forth in the text of plan notes and in the Township Board of Commissioners resolution of approval in order to make it clear that the protection governs future land development submissions also. To the extent there is no subdivision or land development plan filed by the Governing Submission Date, and even if such plans

are filed prior to said date, the Township shall cooperate in providing such ordinances, resolutions, recordable covenants and other documents to satisfy Jaindl that the protection period irrevocably extends until December 30, 2030 for all Subject Properties and Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate.

c. Except as provided in this Section 10.12, the protections and benefits afforded by this MOU shall expire on December 30, 2030.

10.13 As to any subdivision or land development for any part of the Subject Properties or Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, the Township shall not review the design or inspect the construction of roadway improvements falling under the jurisdiction of PennDOT except as follows:

- a. When the Township is the applicant under the Highway Occupancy Permit; or
- b. To the extent improvements will be dedicated to or owned by the Township.

10.14 Jaindl anticipates that development of the Subject Properties may include substantial roadway improvements which require receipt of highway occupancy permits from PennDOT. It shall be a condition precedent to the Jaindl Commitment that the Township cooperate with Jaindl in order to facilitate receipt of permits needed from PennDOT with respect to all subdivision and land development applications/plans filed for review as to any part of the Subject Properties and Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate prior to the Governing Submission Date. As to all subdivision and land development plans/applications filed for review relative to any part of the Subject Properties and Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate following the Governing Submission Date, the Township similarly shall cooperate in order to facilitate Jaindl or a Jaindl Affiliate or designee obtaining permits from PennDOT.

10.15 With regard to all subdivision and land development plans/applications filed for review relative to the Subject Properties and Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, Jaindl, a Jaindl Affiliate or other developer shall have the right to file preliminary/final plans for review and approval and shall not be required to

obtain preliminary plan approval prior to filing final plans/applications for review and approval.

10.16 With respect to each subdivision and land development plan approval relative to any part of the Subject Properties and Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, the Township shall not require that security be posted with the Township for any improvements within the jurisdiction of PennDOT for which PennDOT requires security to be posted, and the extent of any such security shall be as determined by PennDOT. However Jaindl, in Jaindl's sole discretion may elect that security be posted with the Township instead of with PennDOT if acceptable to PennDOT.

10.17 At any time following submission of a subdivision or land development plan involving any part of the Subject Properties or Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate, Jaindl or the developer who has submitted such plan shall have the right, but not the obligation, to purchase in accordance with applicable LCA procedures (or any waivers received relative to such procedures) sanitary sewer allocation that is anticipated to be needed for development of the lands that are the subject of the plan submitted. The Township shall cooperate with any such requests for sanitary sewer allocation.

11. **ABSENCE OF LEGAL CHALLENGES**

- 11.1 A condition precedent to the Jaindl Commitment is that either:
- a. no Legal Challenge has been filed in any forum; or
 - b. if a Legal Challenge is filed, then all of the following shall be met:
 - i. except as set forth in Section 11.3, the Township vigorously defends against the Legal Challenge; and
 - ii. the Township except as set forth in Section 11.3, and Jaindl if Jaindl is a participant, are successful in defending against the Legal Challenge such that the relief requested by the proponent of the Legal Challenge is denied, and the result requested by Jaindl and/or the Township, which is to be consistent with this MOU, is approved/ordered.

11.2 The Township and Jaindl each shall bear its own legal fees and other expenses associated with a Legal Challenge.

11.3 The Township is not obligated to vigorously defend against the following Legal Challenges: an appeal of Township approval of any subdivision or land development plan/application covering any part of the Subject Properties or Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate; a challenge to any application or approval or permit for any off-site improvements proposed or approved that are required or contemplated by any subdivision or land development of any part of the Subject Properties or Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate; a challenge to any relief granted by the Township Zoning Hearing Board regarding subdivision or land development with respect to any part of the Subject Properties or Spring Creek Adjoiners acquired by Jaindl or a Jaindl Affiliate.

11.4 In those instances where the Township is not obligated to vigorously defend against a Legal Challenge, the Township shall not directly or indirectly advocate, support, pursue, or defend any position which in whole or in part is in opposition to Jaindl's position on the Legal Challenge.

11.5 The Township obligation to defend Legal Challenges shall terminate as follows:

- a. As to each potential Legal Challenge that has an applicable statute of limitations period or appeal period, the obligation shall terminate upon the expiration of such applicable statute of limitations period and/or appeal period without the filing of such Legal Challenge; and
- b. For all other potential Legal Challenges, the obligation shall terminate when all other conditions precedent set forth in this MOU have been fulfilled.

12. **GREENWAY PRESERVATION**

12.1 a. Following the adoption of and upon expiration of the appeal period(s) for the ordinance amendments detailed in this MOU without the filing of any such appeal, as part of the Jaindl Commitment, Jaindl will take the steps set forth in this

Article 12 with respect to the Greenway Preservation Lands marked on Exhibit B as “Fred J. Jaindl Proposed Preservation” (parcels of 37 +/- acres and 27 +/- acres).

b. Upon receipt of conditional final approval from the Township for the plans described in Article 10 above which were submitted to the Township before the Governing Submission Date, as part of the Jaindl Commitment, Jaindl will take the steps set forth in this Article 12 with respect to the Greenway Preservation Lands marked on Exhibit B as “David M. Jaindl Proposed Preservation” (parcel of 61 +/- acres).

c. Jaindl will take the steps specified in this Article 12 with respect to the remaining Greenway Preservation Lands in connection with the recording of the last plan to be recorded of the plans which had been submitted to the Township before the Governing Submission Date.

12.2 A restrictive covenant shall be recorded in the offices of the appropriate County Recorder of Deeds by which the portion of the Greenway Preservation Lands designated in Section 12.1 above will be used in perpetuity for Authorized Infrastructure and Purposes Intended for Greenway Preservation Lands only. The parties shall work in a commercially reasonable manner to complete and record each covenant following the occurrence of each event designated in Section 12.1(a) and (b) above and at the time set forth in Section 12.1 (c) above.

12.3 The form and text of the covenant shall be agreed to by Jaindl and the Township, cooperating and acting reasonably. The covenant shall provide, however, for the right of Jaindl, its successors and assigns to utilize the Greenway Preservation Lands for the applicable Authorized Infrastructure.

12.4 Each covenant shall require that the portion of the Greenway Preservation Lands designated in Section 12.1 above is to be used for Purposes Intended for Greenway Preservation Lands in perpetuity, subject to use for Authorized Infrastructure. In perpetuity there shall be only one beneficiary of each covenant, and thereafter that covenant shall not be assignable except by operation of law or with the consent of Jaindl or the Jaindl Affiliate(s) that conveyed ownership of the subject parts of the Greenway Preservation Lands, its successors or assigns. Jaindl, in Jaindl’s sole discretion, shall have the right to designate the sole beneficiary of each covenant as either: the Township,

acting through the Board of Commissioners; or the Wildlands Conservancy, Inc. or other non-profit organization having a similar purpose.

12.5 Mr. Jaindl, his heirs, personal representatives and assigns shall have the right but not the obligation to exercise naming rights with respect to all or part of the Greenway Preservation Lands. The candidates for naming rights shall include Jaindl, any Jaindl Affiliate, Fred J. Jaindl (deceased) and the “Jaindl Family”. Mr. Jaindl, his heirs, personal representatives, successors and assigns shall have the right but not the obligation to erect signage in the Greenway Preservation Lands to recognize the naming rights. By way of example only, the sign might refer to the “Fred J. Jaindl Greenway Preserve”. These naming rights shall be provided for in the restrictive covenant required by this Article 12.

12.6 Jaindl shall have the right but not the obligation to record the restrictive covenant on any or all of the Greenway Preservation Lands earlier than the times set forth in Section 12.1.

13. **OPEN SPACE DEDICATION**

13.1 Jaindl, as part of the Jaindl Commitment, will offer for dedication to the Township the part of the Future Dedicated Open Space located to the West of Smith Lane in connection with the later to occur of the following: (i) the recording of the first plan to be recorded of the plans submitted to the Township prior to the Governing Submission Date, (ii) June 30, 2012, or (iii) the expiration of all appeal periods from the preliminary/final plan approval for each of the plans submitted to the Township prior to the Governing Submission Date without any appeals having been filed or with any filed appeals having been withdrawn or decided in favor of such plan approval. Jaindl shall, however, accelerate such offer of dedication upon the occurrence of the recording of all of the plans submitted to the Township prior to the Governing Submission Date, provided that all appeal periods from such plans and plan approvals have expired without any appeals having been filed or with any filed appeals having been withdrawn or decided in favor of such plans and plan approvals. Upon complete fulfillment of all conditions precedent set forth in this MOU, Jaindl will offer for dedication to the Township the remaining property described in this MOU as the Future Dedicated Open Space.

13.2 The Future Dedicated Open Space shall be transferred by Jaindl to the Township “as-is.” Jaindl shall not be responsible for making any improvements including, but not limited to, grading and topsoiling to the Future Dedicated Open Space.

13.3 The offer of dedication shall be accomplished by tendering a deed of dedication to the Township in form and substance suitable to the purpose and acceptable to the parties acting in their reasonable discretion.

13.4 The offer of dedication shall be accompanied by an attorney’s opinion of record title with customary exceptions, but assuring that title to the property, upon recording of the deed, will be vested in the Township in fee simple. Title shall be free from mortgages and liens.

13.5 Title to the Future Dedicated Open Space to both the West and the East of Smith Lane shall be subject to an easement for the benefit of Jaindl, and Jaindl’s heirs, personal representatives, successors and assigns, allowing in perpetuity, the construction and installation from time-to-time, of the applicable Authorized Infrastructure. The Township shall not be required to maintain such Authorized Infrastructure. The easement on the portion of the Future Dedicated Open Space located to the East of Smith Lane shall be in the nature of a blanket easement. The easement on the portion of the Future Dedicated Open Space located to the West of Smith Lane shall begin at the intersection of the southeastern corner of Tract 4 with Smith Lane and proceed in a generally western direction towards the Buckeye Pipeline easement, turning by means of a smooth curve in a generally northwestern direction before the existing intersection of the PPL easement and Buckeye Pipeline easement (without ever crossing either easement), and then continue parallel to and along the northwestern boundary of Tract 4 to the easement’s conclusion on Tract 4 at the creek. This Western easement shall be a constant fifty (50’) feet in width for its entire length.

13.6 Title to the Future Dedicated Open Space shall be subject to an easement for the benefit of Jaindl Farms, LLC, Jaindl, and Jaindl’s heirs, personal representatives, successors and assigns, allowing Jaindl to farm the Future Dedicated Open Space until such time as the Township has physically commenced developing the property for recreation purposes.

13.7 Jaindl shall have the right but not the obligation to offer the Future Dedicated Open Space for dedication to the Township earlier than the times set forth elsewhere in this Article 13.

13.8 Intentionally Deleted.

13.9 Prior to the Governing Submission Date Jaindl will submit a subdivision plan by which the Homestead Lot and the Smith Lane Homestead are proposed for subdivision from the remainder of the parcel of which they currently are a part, with the remainder of the parcel to be part of the Future Dedicated Open Space or Greenway Preservation Lands as approximately shown on Exhibit "B". In order to facilitate access to the Homestead Lot, the deed of dedication to the Township for the Future Dedicated Open Space shall include the reservation of an easement for perpetual access to the Homestead Lot. In the alternative, in the sole discretion of Jaindl, rather than or in addition to the reservation in the deed of dedication to the Township, the rights of access may be provided by a separate easement document to be duly executed and recorded. The parties acknowledge that subdivision of the Homestead Lot and/or the Smith Lane Homestead may require SALDO waivers and/or zoning relief. The Township agrees to grant any SALDO waivers necessary or appropriate to the subdivision of the Homestead Lot and/or the Smith Lane Homestead pursuant to this MOU. The Township further agrees to support Jaindl with regard to any requests for zoning relief before the Lower Macungie Township Zoning Hearing Board concerning the Homestead Lot and/or the Smith Lane Homestead.

13.10 Mr. Jaindl, his heirs, personal representatives and assigns shall have the right but not the obligation to exercise naming rights with respect to all or part of the Future Dedicated Open Space. The candidates for naming rights shall include Jaindl, any Jaindl Affiliate, Fred J. Jaindl (deceased) and the "Jaindl Family". Mr. Jaindl, his heirs, personal representatives, successors and assigns shall have the right but not the obligation to erect signage in the Future Dedicated Open Space to recognize the naming rights. By way of example only, the sign might refer to the "Fred J. Jaindl Greenway Preserve". These naming rights shall be provided for in the deed of dedication to the Township and/or in a separate document to be duly executed and recorded, in Jaindl's sole discretion.

14. **EXPIRATION OF MOU**

Except as provided in Section 10.12 above, the protections and benefits afforded by this MOU shall expire on December 30, 2030.

15. **MISCELLANEOUS**

15.1 Waiver. Failure or repeated failure by any party to insist upon strict compliance with any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions; and nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

15.2 Binding Effect. This MOU shall be legally binding as an agreement under seal on all parties hereto, their guardians, successors, heirs, executors, administrators, and assigns upon execution by all parties hereto. Until such time as this MOU is duly executed by all parties, no party shall be bound hereby.

15.3 Integration. This MOU constitutes and expresses the whole agreement of the parties hereto with reference to the subject matter hereof or hereinbefore discussed or mentioned, all prior promises, undertakings, representations, agreements, understandings and arrangements relative thereto being superseded and herein merged. This MOU may be modified only in writing executed by all parties hereto. To the extent there is any conflict between a provision of this MOU and any provision of any subsequent document, agreement, writing, or document, this MOU shall control unless such subsequent writing explicitly states that it shall control over this MOU.

15.4 Construction and Interpretation. This MOU has been prepared by and through the joint efforts of the parties hereto and it shall not therefore be interpreted or applied more strictly against one party than the other or more favorably to one party than the other. As used in this MOU, and when required by context, each number (singular or plural) shall include all numbers, and each gender shall include all genders, including the neutral gender. The captions preceding the paragraphs/sections and articles are intended only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of provisions contained therein.

15.5 Cooperation. Each party to this MOU agrees to perform any further acts and to execute, acknowledge, and deliver any further documents that may be reasonably necessary to carry out the intent and purpose of this MOU.

15.6 Notices. All notices, statements, requests, demands, consents, and other communications (each referred to herein as "**Notice**") permitted or desired to be made relative to this MOU shall be given by one of the methods described in this paragraph. Notice shall be effective and deemed to have been received as follows: when actually received by any method including hand-delivery and facsimile; one day after deposit for overnight delivery with a nationally recognized courier requiring a signature for receipt; two days following deposit with the U.S. Postal Service, postage prepaid, certified mail. All Notices shall be directed to the parties at the addresses shown in this MOU. Any party may change its address for Notices under this MOU by giving written Notice in like manner to the other party(ies), specifying that the purpose of the Notice is to change the party's address.

In addition to notice to the parties, copies of all Notices shall be provided in the same manner to the following persons:

In the case of Notice to Jaindl:

Joseph A. Zator II, Esquire
Zator Law Offices, LLC
American Heritage Building
4400 Walbert Avenue at Ridgeview Drive
Allentown, PA 18104
Phone: (610) 432-1900
Fax: (610) 432-1707
Email: jzator@zatorlaw.com

In the case of notice to Lower Macungie Township:

Township Solicitor of record at the time Notice is to be given;
the Township Solicitor as of the time of execution of this MOU is:

Peter Nelson, Esquire
Grim, Biehn & Thatcher
104 South 6th Street
P.O. Box 215
Perkasie, PA 18944-0215
Phone: (215) 257-6811

Fax: (215) 257-5374
Email: pnelson@grimlaw.com

15.7 Third Parties. Unless explicitly set forth herein, this MOU is not intended to and does not make any person not a party to this MOU, a third-party beneficiary of this MOU or any actions taken by any party in furtherance of or as contemplated by this MOU. The parties do intend that the owners of some or all of the Spring Creek Adjoiners, whether Jaindl, a Jaindl Affiliate, or someone else, shall receive all of the benefits for the Spring Creek Adjoiners specified herein which Jaindl and/or a Jaindl Affiliate would receive if Jaindl and/or a Jaindl Affiliate owned the Spring Creek Adjoiners. The parties agree that the specification of only Jaindl or a Jaindl Affiliate as the owners of the Spring Creek Adjoiners in this MOU was for ease of drafting, and was not intended to and does not exclude anyone else who might own some or all of the Spring Creek Adjoiners.

15.8 Disputes. If any questions should arise in the interpretation or administration of this MOU, or if a dispute should arise between or among parties relative to the MOU, they shall be resolved by mutual agreement in good faith, which shall be reduced to writing promptly thereafter. Only upon the failure of such good faith efforts may a party seek recourse to the courts. It is mutually agreed by and between the parties hereto that the respective parties hereto shall, and they hereby do, waive the right to a trial by jury in any action, proceeding, or counterclaim brought by any party hereto against another relating to any matter(s) whatsoever arising out of or in any way connected with this MOU.

15.9 Severability. In the event any Section or portion of this MOU shall be or be deemed by any court having lawful jurisdiction over the subject matter of this MOU to be void, voidable, illegal, unenforceable or invalid for any reason, this MOU shall be otherwise valid and enforceable as if said void, voidable, or invalid Section or portion of this MOU has not been a part hereof in the first instance. Notwithstanding the foregoing in this Section, however,

a. unless explicitly agreed in writing to the contrary by Jaindl in the future, the conditions precedent set forth in this MOU are non-severable. In the event any portion of this MOU containing a condition precedent shall or shall be deemed by

any court having lawful jurisdiction, to be void, voidable, illegal, unenforceable or invalid for any reason, the said condition precedent shall be deemed to have been unfulfilled and incomplete, thereby terminating any requirement upon Jaindl to fulfill the Jaindl Commitment.

b. unless explicitly agreed in writing to the contrary by the Township in the future, the obligations of Jaindl set forth in this MOU are non-severable. In the event any portion of this MOU containing an obligation of Jaindl shall or shall be deemed by any court having lawful jurisdiction, to be void, voidable, illegal, unenforceable or invalid for any reason, the said obligation shall be deemed to have been unfulfilled and incomplete, thereby terminating any requirement upon the Township to fulfill the Township's obligations under this MOU, unless Jaindl shall nevertheless have fulfilled such obligation prior to, at the time of, or after such court decision which shall negate the provisions of this Section 15.9(b) with respect to that obligation and retain the Township's obligations under this MOU.

15.10 Attorneys' Fees. If any arbitration, suit or action is instituted to enforce the rights of either party under this MOU, the successful party shall be entitled to reasonable attorneys' fees and costs. The phrase "**successful party**" shall include a party who receives substantially the relief desired whether by dismissal, summary judgment, judgment, or otherwise.

15.11 Time of the Essence. Time is of the essence with regard to each action of each party hereto. Notwithstanding the foregoing, where the Township does not have control over an approval process, for example, with Norfolk Southern Railroad for the at-grade crossing for the extension of Sauerkraut Lane, and such relief is part of a condition precedent to the Jaindl Commitment, the Township shall be obligated to exercise its good faith best efforts within the specified time frame to obtain that desired relief and shall not be found to be in default because any other party with such control failed to provide such relief. However, except as provided in this Section 15.11, any condition precedent which required such relief shall be and remain incomplete despite the exercise of good faith best efforts by the Township. The exception to such provision shall be with regard to a lack of approval from Norfolk Southern Railroad at the deadline set in Section 9.8(b) above despite the Township's compliance with Section 9.8(b), including for example the

exercise of good faith best efforts. In such event, the parties agree that the permits and approval of Norfolk Southern Railroad under Section 9.8(b) shall be waived as a condition precedent to the Jaindl Commitment.

15.12 Choice of Law. This MOU is to be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to conflict of laws principles. Jurisdiction and venue for any dispute in any way relating to the matters which are the subject of this MOU, shall be exclusively in the Court of Common Pleas of Lehigh County, Pennsylvania, and the parties shall use said forum in the event of litigation. This MOU has been entered into in Lehigh County, Pennsylvania.

[THIS SPACE IS BLANK. DOCUMENT CONTINUES ON NEXT PAGE.]

IN WITNESS WHEREOF, the parties have duly authorized execution hereof and do hereunto put their hands and seals this ____ day of _____, 2010.

ATTEST:

LOWER MACUNGIE TOWNSHIP

Renee Flexer, Township Secretary

By: _____ (SEAL)
Roger C. Reis, President
Board of Commissioners

Township Seal:

WITNESS:

JAINDL REALTY, L.P.

By: _____ (SEAL)
David M. Jaindl
General Partner

David M. Jaindl, Individually (SEAL)

ATTEST:

JAINDL LAND COMPANY

By: _____ (SEAL)
David M. Jaindl, President