

BEFORE THE ZONING HEARING BOARD OF MOUNT JOY TOWNSHIP,
LANCASTER COUNTY, PENNSYLVANIA

IN RE: Application for Special Exception :
Filed by PDC Northeast LPIV, LLC :
 :
PROPERTY: 2843 Mount Pleasant Road, : Zoning Case No. 230001
Mount Joy, PA 17552 :
 :
ZONING :
DISTRICT: LI- Light Industrial District :

DECISION OF THE BOARD

I. FINDINGS OF FACT.

A. Procedural; Parties

1. The Applicant is PDC Northeast LPIV, LLC, a Delaware limited liability company with a principal address of 2442 Dupont Drive, Irvine, California 92612 (the “Applicant”). The Applicant is a subsidiary of Panattoni Development Company, Inc. (“Panattoni”).

2. The Applicant is the equitable owner of an approximately 106.5-acre tract of land located at 2843 Mount Pleasant Road in Mount Joy Township (the “Township”), Lancaster County, Pennsylvania, identified as Tax Parcel No. 4618992200000 (the “Property”).

3. Franklin B. Greiner, Jr. is the legal owner of the Property.

4. The Applicant intends to construct an approximately 1,006,880-square-foot (620' x 1,624') warehouse or distribution building on the Property (the “Facility”), along with associated access drives, loading/docking areas, parking, stormwater management facilities, landscaping, and related improvements (collectively, the “Proposed Development”).

5. The Applicant submitted a Zoning Hearing Board Application with supporting documentation (Exhibit A-1), including a Concept Plan (Exhibit A-4), to the Mount Joy Township Zoning Hearing Board (the “Board”) on December 7, 2022 (the “Application”).

6. The Application is for two special exceptions, pursuant to Sections 135-163.B and 135-163.C of the Mount Joy Township Zoning Ordinance of 2012 (the “Zoning Ordinance”), to authorize an industrial use involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, or repair of all reasonable materials, goods, and products in a building larger than 50,000 square feet (i.e., the Facility) on the Property (the “Proposed Use”).

7. Hearings on the Application were held before the Board on January 17, 2023 (the “First Hearing”), February 15, 2023 (the “Second Hearing”), March 9, 2023 (the “Third Hearing”), April 18, 2023, and April 27, 2023. The testimony was closed on April 27, 2023.

8. Notice of the hearings was duly posted, advertised, and provided in the record in accordance with the applicable provisions of the Pennsylvania Municipalities Planning Code (“MPC”), 53 P.S. § 10101, *et seq.*, and the Zoning Ordinance. The hearings were held in Elizabethtown Middle School’s auditorium.

9. Board members Thomas A. Campbell, James E. Hershey, Gregory Hitz, Sr., and Robert R. Newton, Jr. (alternate member) attended the hearings or, when unable to attend in person, reviewed the transcripts of the hearings. Mr. Campbell moved out of the Township after the hearing on April 18, 2023. He did not attend the hearing on April 27, 2023, because he no longer was a member of the Board. Mr. Newton, the alternate Board member, replaced Mr. Campbell on the Board.

10. The Township was represented by its counsel Josele Cleary, Esquire of Morgan, Hallgren, Crosswell & Kane P.C. Justin Evans, the Township's Manager, also attended on behalf of the Township.

11. The Applicant was represented by its counsel Jeffrey E. McCombie, Esquire of McNees Wallace & Nurick LLC.

12. Michelle Kennedy sought party status as a nearby property owner located at 2635 Stauffer Road. The Board recognized Ms. Kennedy as a party.

13. Bobbi Thompson sought party status as a nearby property owner located at 8226 Elizabethtown Road and 2619 Stauffer Road. The Board recognized Ms. Thompson as a party.

14. Randy Stevens sought party status as a nearby property owner located at 2541 Mount Pleasant Road. The Board recognized Mr. Stevens as a party.

15. Sarah Haines sought party status as a nearby property owner located at 1489 Grandview Road. The Board recognized Ms. Haines as a party.

16. Donna Bucher sought party status as a nearby property owner located at 680 Cloverleaf Road. Applicant objected to Ms. Bucher's party status on grounds that she would not be affected differently than the general public because her property is located 0.8 miles from the Property and on the other side of Interstate Highway PA-283 ("Route 283"). The Board recognized Ms. Bucher as a party over Applicant's objection.

17. Thomas McKinne sought party status. The Applicant objected to Mr. McKinne's standing as a party to the proceedings on the grounds that Mr. McKinne would not be affected differently than the general public because his property is located approximately 1.5 miles from the Property. Mr. McKinne withdrew his standing request because he could not

provide any reasoning for why the Proposed Use or Proposed Development would affect him differently than the general public.

18. Joelle Myers sought party status as a nearby property owner located at 2706 Mount Pleasant Road. The Board recognized Ms. Myers as a party. Beginning with the Second Hearing, Ms. Myers was represented by her counsel William J. Cluck, Esquire of the Law Office of William J. Cluck.

19. Allen Sollenberger sought party status as a nearby property owner located at 1437 Grandview Road. The Board recognized Mr. Sollenberger as a party.

20. The Board recognized Mount Joy Township as a party.

21. During the Second Hearing, Andrew Goodman sought party status as a nearby property owner located at 2337 Mount Pleasant Road. The Board recognized Mr. Goodman as a party. Although Mr. Goodman attended the First Hearing and did not seek party status at that time, Applicant did not object to Mr. Goodman's standing because Mr. Goodman testified that he has a hearing disability and did not understand that he could seek party status during the First Hearing.

22. During the Second Hearing, Diane Edmond sought party status as a nearby property owner located at 2622 Mount Pleasant Road. The Applicant objected to Ms. Edmond's party status on the grounds that party status was handled at the First Hearing. The Board overruled the Applicant's objection and granted party status to Ms. Edmond.

23. During the Second Hearing, Ryan Spahr¹ sought party status as a nearby property owner located at 2588 Mount Pleasant Road. The Applicant objected to Mr. Spahr's

¹ The transcript for the Second Hearing misstates Mr. Spahr's first name as Brian when it is Ryan.

party status on the grounds that party status was handled at the First Hearing. The Board overruled the Applicant's objection and granted party status to Mr. Spahr.

24. Those individuals having party status in opposition to the Application are collectively referred to herein as "Objectors."

B. Witnesses; Experts

25. Testimony was offered on behalf of the Applicant by the following individuals: Jeramy Bittinger, E.I.T., Project Manager with Landworks Civil Design; Jarred Neal, P.E., Senior Project Manager with Traffic Planning and Design ("TPD"); Joe Peters, Development Manager with Panattoni and Applicant.

26. Mr. Bittinger testified at the First Hearing and the Second Hearing.

27. Mr. Bittinger has a Bachelor of Science degree in Civil Engineering and Technology from the University of Pittsburgh at Johnstown.

28. Mr. Bittinger has worked for engineering firms designing projects like the Proposed Development for approximately five years. Mr. Bittinger has worked on approximately forty-five warehouse and distribution center projects and seventy-five industrial, commercial, and residential projects during his career.

29. When designing such projects, part of Mr. Bittinger's role is to review municipal ordinances to ensure compliance with applicable regulations or to determine what zoning relief or plan revisions are required for compliance.

30. The Board accepted Mr. Bittinger as an expert in site design and zoning compliance. The Board found his testimony to be credible.

31. Mr. Bittinger prepared the Concept Plan (Exhibit A-4), Landscape and Lighting Plan (Exhibit A-5), and Performance Report (Exhibit A-7) for compliance with the Zoning Ordinance.

32. Mr. Neal testified at the First Hearing and the Second Hearing.

33. Mr. Neal is a professional engineer licensed in the Commonwealth of Pennsylvania and has a Bachelor of Science degree in Civil Engineering and Technology from Penn College of Technology.

34. Mr. Neal has worked in the industry for approximately sixteen years and has conducted traffic studies and designed traffic improvements for hundreds of projects, including several in the Route 283 corridor. He has worked on thirty or more warehouse or distribution center projects during his career.

35. The Board accepted Mr. Neal as an expert in traffic planning and design for warehouses and distribution centers and similar uses. The Board found his testimony to be credible.

36. Mr. Neal prepared the Traffic Report dated December 22, 2022 (Exhibit A-12) and the Steel Way/Cloverleaf Road Plan dated January 11, 2023 (Exhibit A-13) for compliance with the Zoning Ordinance.

37. Joe Peters testified at the First Hearing and the Second Hearing.

38. Mr. Peters has worked for Panattoni and the Applicant for approximately one year. Prior to this position, Mr. Peters was a civil engineer for approximately ten years and designed several warehouse and distribution facilities like the proposed Facility.

39. The Board found Mr. Peters' testimony to be credible.

40. Testimony was offered on behalf of Joelle Myers by the following individuals: John Nawn, P.E., PTOE, F. NSPE, with Delon Hampton Associates Chartered, and Alan S. Peterson, MD, with Lancaster General Health.

41. John Nawn testified at the Third Hearing.

42. Mr. Nawn is a professional engineer licensed in the Commonwealth of Pennsylvania. Mr. Nawn has a Bachelor of Science and Master's Degree of Science in Civil Engineering from Drexel University.

43. Mr. Nawn has thirty-six years of experience in civil highway traffic municipal engineering and is a former municipal engineer and municipal traffic engineer. Mr. Nawn testified that he has spent the last ten years doing mostly forensic work on rail projects. It is unclear whether Mr. Nawn has experience designing or analyzing traffic improvements for warehousing, distribution, or other industrial facilities because neither his testimony nor his C.V. established that he has such experience.

44. Mr. Nawn was accepted as an expert in transportation engineering, as opposed to traffic planning and design for warehouses and distribution centers and similar uses, based on his professional history.

45. Dr. Allen Peterson testified at the Third Hearing.

46. Dr. Peterson was the Director of Environmental and Community Health at Lancaster General Health for 23 years. He took emeritus status in 2013.

47. Dr. Peterson was accepted as an expert in environmental and community health; although, the Board notes that Dr. Peterson acknowledged that some of his answers were prepared by Attorney Cluck. *Tr. Day 3, p. 342.*

C. Characteristics of the Subject Property

48. The Property is approximately 106.5 acres in size and currently is used for storage of trailers and other items. *Tr. Day 1, pp. 21-23; Exhibit A-4.*

49. The Property is in the Township's LI- Light Industrial District (the "LI-District"). *Tr. Day 1, p. 22; Zoning Map.*

50. The LI-District extends to the west, northwest, and south of the Property and the Agricultural (A) District extends east and north of the Property. *Tr. Day 1, p. 22; Zoning Map.*

51. The Property is located along the northern side of Route 283, which is a high-volume, multiple-lane limited access highway. *Exhibit A-1; see also Tr. Day 1, p. 22.*

52. The Property abuts State Road 4010 which is known as Mount Pleasant Road. *See Exhibit A-1, Narrative, p. 1.*

53. Mount Pleasant Road is a public street designated as a collector road by Section 135-301.B of the Zoning Ordinance. *Tr. Day 1, p. 22.*

54. Mount Pleasant Road intersects with Cloverleaf Road to the northwest and Stauffer Road to the southeast. *See Exhibit A-1.*

55. Cloverleaf Road is west of the Property, Stauffer Road abuts the Property, and Schwanger Road is south of the Property. *See Exhibit A-1.*

56. Located opposite and south of the Property on Mount Pleasant Road is a 450,000 square-foot industrial facility known as Greiner Industries, which is the largest job-shop structural steel fabrication operation in Southcentral Pennsylvania. *Tr. Day 1, pp. 21-22, 42; Exhibit A-1, Narrative.*

57. Woodlands, farmlands, and a few single family residents about the Property to the north and east. *See Exhibit A-1.*

58. There are wetlands, streams, and wooded lands located on the northeastern portion of the Property and the southwestern portion of the Property. *Tr. Day 1, pp. 23, 76; Exhibit A-1.*

59. The Property is in an area serviced by police and fire protection. *Tr. Day 1, p. 23.*

D. The Application and Proposed Development

60. The Application for the Proposed Use was accepted by the Township as complete and includes a completed Mount Joy Township Zoning Hearing Board Application form, an Aerial Image of the Property, a Narrative providing justification for the requested relief, a Concept Plan depicting the Proposed Improvements, a check for the filing fee, and a transmittal letter. *Exhibit A-1.*

61. The Proposed Development includes an approximately 1,006,880-square-foot (620' x 1,624') warehouse or distribution building (i.e., the Facility), two access drives from Mount Pleasant Road, 440 employee parking spaces, 212 trailer parking spaces, approximately 154 dock positions, stormwater management facilities, screening and landscaping, and other related improvements. *Exhibit A-4.*

E. Concept Plan; Compliance with Zoning Ordinance

62. Through Applicant's exhibits, including among others, the Application (Exhibit A-1), Concept Plan (Exhibit A-4), Landscape and Lighting Plan (Exhibit A-5), Lighting Details Sheet (Exhibit A-6), Performance Report (Exhibit A-7), Building Rendering (Exhibit A-8), Building Elevations (Exhibit A-9), Conditions of Approval (Exhibit A-10), TPD Letter dated

December 22, 2022 (Exhibit A-12), and the Steel Way/Cloverleaf Road Plan (Exhibit A-13), and expert testimony from Mr. Bittinger and Mr. Neal, Applicant put forth the following evidence and expert opinions:

a. The Property is in the LI District and the Proposed Use is permitted in the LI District by special exception. *Tr. Day 1, p. 24-25; Zoning Ordinance Section 135-163.*

b. Section 135-163.B of the Zoning Ordinance permits by special exception an industrial use “involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, or repair of” the specific products listed in Section 135-163.B in a “building area exceeding 50,000 square feet”. *Tr. Day 1, pp. 24-25; Zoning Ordinance Section 135-163.B.*

c. Section 135-163.C of the Zoning Ordinance permits “Industrial uses involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, or repair of items not specifically referenced by § 135-162E” by special exception. *Tr. Day 1, pp. 24-25; Zoning Ordinance Section 135-163.C.*

d. The Zoning Ordinance does not contain any specific criteria for the Proposed Use or a substantially similar use. *Tr. Day 1, p. 25; see Article XXII Zoning Ordinance.*

e. The Application complies with the objective and subjective requirements of Article XVII of the Zoning Ordinance, GI – General Industrial District, as described in greater detail below. *Exhibit A-1, Narrative, pp. 1-14; see also Tr. Day 1, p. 43.*

f. Section 135-165.A of the Zoning Ordinance does not limit the height of the Facility, but the proposed height of the Facility is approximately 40 to 50 feet depending on the final design. *Tr. Day 1, p. 25; see Section 135-165.A Zoning Ordinance.*

g. The Building Rendering and Building Elevations were prepared by Providence Engineering and provide a general depiction of what the proposed Facility might look like. *Tr. Day 1, pp. 40-41; Exhibit A-8; Exhibit A-9.*

h. Section 135-165.B of the Zoning Ordinance requires a minimum lot area of 15,000 square feet (0.344 acres). The Property is 106.5 acres. *Tr. Day 1, p. 21; Exhibit A-1, Narrative, p. 3; Exhibit A-4; see Section 135-165.B(1)(c) Zoning Ordinance.*

i. Section 135-165.C of the Zoning Ordinance requires a minimum lot width of 75 feet at the building setback line. The Property has a lot width larger than 1,000 feet. *Tr. Day 1, p. 26; Exhibit A-4; see Section 135-165.C(2) Zoning Ordinance.*

j. Section 135-165.D of the Zoning Ordinance requires a minimum lot depth of 125 feet. The Property's lot depth is several hundred feet. *See Tr. Day 1, p. 43; Exhibit A-4; see Section 135-165.D Zoning Ordinance.*

k. Section 135-165.E of the Zoning Ordinance requires a minimum front yard building setback of 40 feet from the ultimate street right-of-way; off-street parking and outdoor storage areas to be set back at least 15 feet from the ultimate right-of-way; all buildings, off-street parking lots, loading areas and outdoor storage areas to be set back at least 15 feet from each side lot line; off-street parking lots, loading areas and outdoor storage areas to be set back at least 15 feet from the rear lot line; and all buildings, dumpster locations, parking areas, loading areas and outdoor storage areas to be set back at least 80 feet from lots used for residential purposes. As depicted on the Concept Plan, the Facility is set back greater than 40 feet from the ultimate street right-of-way; off-street parking is set back more than 15 feet from the ultimate street right-of-way and no off-street loading is proposed in the front yard; off-street parking lots and loading areas are setback more than 15 feet from each side lot line; off-street parking lots

and loading areas are setback more than 30 feet from the rear lot line; and all buildings, dumpster locations, parking areas and loading areas are setback greater than 80 feet from lots used for residential purposes and lots in the Agricultural District, within which single-family dwellings are permitted. *Tr. Day 1, pp. 26-28; Exhibit A-1, Narrative, pp. 3-4; Exhibit A-4; see Section 135-165.E(1), (2), (3), (4) Zoning Ordinance.*

l. Section 135-165.F of the Zoning Ordinance requires that the total building coverage for nonresidential uses shall not exceed 60% and the total impervious coverage for nonresidential uses shall not exceed 70%. The proposed building coverage for the Proposed Development is 21.7% and the proposed impervious coverage for the Proposed Development is 40.2%. *Tr. Day 1, pp. 27-28; Exhibit A-1, Narrative, p. 4; Exhibit A-4; Section 135-165.F(1)(a), (2)(a) Zoning Ordinance.*

m. Section 135-166 of the Zoning Ordinance requires (i) industrial uses adjoining a residential district or residential use to contain a residential buffer strip that is at least 15 feet wide and consists of a mix of evergreen and deciduous trees to screen buildings, off-street parking and loading areas from view, and (ii) an applicant to submit a comprehensive landscape plan with a Zoning Hearing Board application. As depicted on the Landscape Plan and Concept Plan, the Application complies with the landscaping and screening requirements of the Zoning Ordinance and in some areas of the Property Applicant proposes more screening than what is required by Section 135-166 of the Zoning Ordinance. *Tr. Day 1, pp. 35-36; Exhibit A-4; Exhibit A-5; Section 135-166.A, B Zoning Ordinance..*

n. The loading docks will be located on the east and west sides of the Facility. *Tr. Day 1, p. 25; Exhibit A-4.*

o. The Application complies with the applicable objective and subjective requirements of Article XXIII of the Zoning Ordinance. *Exhibit A-1, Narrative, pp. 5-10.*

p. The Property abuts a public street (Mount Pleasant Road) and the Proposed Development includes access drives to Mount Pleasant Road at two points. *Tr. Day 1, p. 26; Exhibit A-4.* The access drives from Mount Pleasant Road are designed to accommodate trucks and emergency vehicles and provide circulation throughout the Proposed Development. *Tr. Day 1, p. 26; Exhibit A-3; Exhibit A-4; see Section 135-294 Zoning Ordinance.*

q. Although a second building is contemplated, the Application proposes one principal use on the Property. *Exhibit A-1; Exhibit A-4; see Section 135-295 Zoning Ordinance.*

r. Although the Property also abuts Stauffer Road, the Property does not have access from or to Stauffer Road and the Application does not propose access from or to Stauffer Road. *Tr. Day 1, p. 47; Exhibit A-4.*

s. The Property is a corner lot, and the intersection of Mount Pleasant Road and Stauffer Road will be unobstructed in accordance with Section 135-296 of the Zoning Ordinance. *Tr. Day 1, p. 28; Exhibit A-4; see Section 135-296 Zoning Ordinance.*

t. As depicted on the Lighting Plan and Lighting Details, the Application complies with the applicable requirements of Section 135-298 of the Zoning Ordinance, including the design and illumination requirements of Section 135-298.C and the lighting plan requirements of Section 135-298.D. *Exhibit A-5; Exhibit A-6; Section 135-298.C, D Zoning Ordinance.* For example, the Application proposes cut off features, lighting directed

toward the interior, trespass of 0.1 footcandle or less onto any residential use, and vegetation screens, among other features. *Tr. Day 1, pp. 38-39; Exhibit A-5; Exhibit A-6.*

u. The Proposed Development will utilize 30-foot-tall pole-mounted lights and 25-foot-tall wall packs that will be directed down with cutoff. *Tr. Day 1, pp. 38-39.*

v. Section 135-299.A of the Zoning Ordinance requires any part of an industrial lot that is not used for structures, loading areas, parking areas, driveways, access drives, storage areas and walkways to be planted or landscaped in accordance with a landscaping plan to be approved by the Township. *Section 135-299.A Zoning Ordinance.* The Application complies with the requirements of Section 135-299. *Tr. Day 1, pp. 35-36; Exhibit A-4; Exhibit A-5; Exhibit A-10.*

w. For example: Section 135-299.B of the Zoning Ordinance requires all nonresidential uses to contain at least a 10-foot-wide landscape strip in all yards. *Section 135-299.B(1).* The Landscape Plan depicts a 10-foot-wide or wider landscape strip in all yards. *Tr. Day 1, p. 36; Exhibit A-4; Exhibit A-5.* Section 135-299.C of the Zoning Ordinance requires that nonresidential uses contain a landscape screen, in addition to the landscape strip, when adjacent to a residential zone or a property that is available for residential use. *Section 135-299.C(1).* The Landscape Plan depicts a landscape screen along such areas and, in some areas, provides greater screening than what is required by the Zoning Ordinance, specifically including a berm with screening on top of it in the southeastern corner of the Property for the benefit of the closest dwellings. *Tr. Day 1, pp. 35-36; Exhibit A-4; Exhibit A-5.* Section 135-299.D requires landscape strips for parking areas and that 5% of the total area of the parking lot be devoted to interior landscaping. *Section 135-299.D(1), (2)(a), (3) Zoning Ordinance.* The Landscape Plan depicts such landscaping strips and that at least 55% of the total area of the parking lots are devoted to

interior landscaping. *Tr. Day 1, p. 33; Exhibit A-4; Exhibit A-5.* In total, approximately 270 trees are proposed to be planted on the Property as part of the Proposed Development and, where possible, healthy existing trees are proposed to be preserved and protected. *Tr. Day 1, p. 33; Exhibit A-4; Exhibit A-5.*

x. Section 135-306 of the Zoning Ordinance includes requirements for riparian corridors and setback requirements from waterways and major drainage swales. *Section 135-306 Zoning Ordinance.* The Application complies with the applicable required setbacks and related requirements of Section 135-306. *Tr. Day 1, pp. 36-37; Exhibit A-1; Exhibit A-4; Exhibit A-5; Exhibit A-7; Exhibit A-10.*

y. For example, the Zoning Ordinance requires riparian corridors of 30 feet on each side of any stream or watercourse and that the riparian corridors be placed within a conservation easement. *Section 135-306.A, F.* As depicted on the Landscape Plan and explained in the Proposed Conditions of Approval, riparian corridors of 30 feet are provided on each side of any stream or watercourse and such areas are proposed to be placed within a conservation easement. *Tr. Day 1, pp. 36-37; Exhibit A-4; Exhibit A-7; Exhibit A-10.*

z. Section 135-307 of the Zoning Ordinance sets forth required setbacks and related requirements for wetlands. *Section 135-307 Zoning Ordinance.* The Application complies with the applicable required setbacks and related requirements of Section 135-307. *Tr. Day 1, pp. 37-38; Exhibit A-4; Exhibit A-7; Exhibit A-10.*

aa. For example, the Proposed Use includes a 25-foot buffer around all wetlands, that all wetland locations be placed within a conservation easement, and that Applicant enter into a recordable agreement with the Township providing for the permanent maintenance of the wetland area. *Tr. Day 1, pp. 37-38; Exhibit A-4; Exhibit A-7; Exhibit A-10.*

bb. Section 135-310 of the Zoning Ordinance does not require a traffic study for the Proposed Use; rather, it requires compliance with Chapter 119, Subdivision and Land Development, only when the Zoning Ordinance requires a traffic study. *Tr. Day 1, p. 81; Section 135-310 Zoning Ordinance.* The traffic provisions applicable to the Application are in Section 135-383.B(2) of the Zoning Ordinance.

cc. Section 135-383.B(2) of the Zoning Ordinance requires that the “peak traffic generated by the [Proposed Use] be accommodated in a safe and efficient manner or improvements made in order to effect the same.” *Section 135-383.B(2) Zoning Ordinance.* Applicant addressed traffic and proposed traffic improvements to ensure that peak traffic is accommodated in a safe and efficient manner in detail via testimony from Mr. Neal, the Concept Plan, the Proposed Conditions of Approval, the TPD Letter dated December 22, 2022, and the Steel Way/Cloverleaf Road Plan. *Exhibit A-4; Exhibit A-10; Exhibit A-12; Exhibit A-13; see generally testimony from Mr. Neal, Tr. Day 1 and Tr. Day 2.*

dd. The intersection of Mount Pleasant Road and Cloverleaf Road is undesirable for truck traffic; therefore, Applicant proposes to extend Steel Way Drive to Mount Pleasant Road, as depicted on the Concept Plan (the “Steel Way Drive Extension”), to channel truck traffic off Cloverleaf Road, onto Steel Way Drive, and through a to-be constructed, easily navigable intersection between Mount Pleasant Road (east/west), Steel Way Drive (south), and the Proposed Development’s western access drive (north). *Tr. Day 1, pp. 31-32, 93-94; Exhibit A-4.*

ee. In addition, Applicant proposes a slight widening of the southern corner of the intersection of Cloverleaf Road and Steel Way Drive to better accommodate existing and proposed truck traffic. *Tr. Day 1, pp. 31-33; Exhibit A-13.*

ff. The proposed Steel Way Drive Extension should reduce truck traffic, including existing truck traffic, on Mount Pleasant Road by moving it into the commercial and industrial areas along Steel Way Drive. *Tr. Day 1, pp. 31-32.* The Board notes that existing truck traffic, including from farms, will benefit from the use of the Steel Way Drive Extension because drivers will be able to avoid the Cloverleaf Road and Mount Pleasant Road Intersection.

gg. The eastern access drive for the Proposed Development is proposed as employee access only and Applicant proposes to install geometric design elements and signage to deter, if not prohibit, left turns by any motor vehicle out of the Proposed Development onto Mount Pleasant Road. *Tr. Day 1, pp. 91-94.* Although it might not be possible to deter or prohibit all motor vehicle traffic from turning left out of the Proposed Development, Applicant will install improvements to deter, if not prohibit, truck traffic from making a left turn out of the Proposed Development on to Mount Pleasant Road. *Tr. Day 1, pp. 87, 91-94.*

hh. Proposed Conditions of Approval #2, #3, #4, #5, #6, #7, #8, #9, #10, #22, #24, and #25 address traffic improvements and related matters in greater detail. *See Exhibit A-10.*

ii. The traffic improvements for the Proposed Development will require a highway occupancy permit through the Pennsylvania Department of Transportation (“PennDOT”). *Tr. Day 1, p. 85.*

jj. Section 135-315 of the Zoning Ordinance addresses fences and walls. The Application does not propose any fences. *Tr. Day 1, p. 28.*

kk. The Proposed Development includes four retaining walls: Wall Number 1 is proposed between the employee lot and access drive; Wall Number 2 is proposed

between the employee lot and the western access drive; Wall Number 3 is proposed at the northeastern portion of the Proposed Development between Luke Road and the proposed basin; Wall Number 4 is proposed between the western access drive and the truck port from the western access drive. *Tr. Day 1, pp. 28-30; Exhibit A-4.*

ll. A structural engineer shall design the proposed retaining walls in accordance with Section 135-135.B of the Zoning Ordinance and the UCC. *Tr. Day 1, p. 30.*

mm. Wall Number 1 and Wall Number 3 face dwellings and both are set back more than 15 feet from the shared lot line. *Tr. Day 1, p. 31; Exhibit A-4.*

nn. The Application complies with the performance and design standards for all nonresidential uses set forth in Section 135-326 of the Zoning Ordinance. *Tr. Day 1, pp. 39-40; Exhibit A-1, Narrative, pp. 7-10; see also Exhibit A-4, Exhibit A-5, Exhibit A-6, Exhibit A-7, Exhibit A-8, Exhibit A-9, Exhibit A-10, Exhibit A-12, and Exhibit A-13.* More specifically, the Proposed Use will be compliant with Section 135-326 as to permitted levels of radioactivity, electrical disturbances, dust, fumes, vibration, heat, odorous gases, glare, and other nuisances. *Day 1, pp. 39-40; Exhibit A-1, Narrative, pp. 7-10; see also Exhibit A-4, Exhibit A-5, Exhibit A-6, Exhibit A-7, Exhibit A-8, Exhibit A-9, Exhibit A-10, Exhibit A-12, and Exhibit A-13.* In addition, testimony from Objectors' expert, Dr. Peterson, confirms that all uses create some amount of nuisance, including farms, and that any nuisance created by the Proposed Use would be a nuisance created by any warehouse or logistics center of its permitted size. *Day 3, pp. 322, 343.*

oo. Specifically, as to Section 135-326.D of the Zoning Ordinance, the Board notes that the Township Zoning Officer issued a determination letter confirming that a "residential development" is not located within 600' of the Property.

pp. As to Section 135-326.N, the Proposed Development will be served by public water and sewer, and the utilities will be extended by Applicant from the Route 283 interchange with Cloverleaf Road (the “283 Interchange”) and Steel Way Drive. *Tr. Day 1, pp. 25-26.*

qq. Fire protection for the Facility will be handled by an automatic sprinkler system and on-site water tank. *Tr. Day 1, p. 26.* In addition, public police protection and fire protection will service the Property. *Tr. Day 1, p. 23.*

rr. Other than signage required by the Township or PennDOT, Applicant is not currently proposing any signage with the Application, such that Article XXIV is inapplicable. *Exhibit A-1, Narrative, p. 5.*

ss. Section 135-343.D(2) of Article XXV of the Zoning Ordinance requires that warehousing uses provide one space for each employee on the largest shift. The Application proposes 440 parking spaces for employees, such that the largest shift will not exceed 440 employees. *Tr. Day 1, pp. 26-27; Exhibit A-1, Narrative, p. 10; Exhibit A-4.*

tt. Section 135-346 of the Zoning Ordinance probably is not intended to apply to the Propose Use; however, as depicted on the Concept Plan, the Proposed Development includes hundreds of off-street loading and unloading spaces and also complies with the design requirements of Section 135-346. *Exhibit A-1, Narrative, p. 10; Exhibit A-4.*

uu. The Proposed Conditions of Approval were prepared and submitted by the Applicant and are acceptable to the Applicant. *Tr. Day 1, pp. 41, 43; Exhibit A-10.* The Proposed Conditions of Approval address traffic improvements, payment of fees and expenses and financial security, prohibited access, landscaping and screening, limitations on impervious coverage, aesthetics (e.g., limited visibility of roof top mechanical equipment) and

architecture, provision of utilities, police and fire access, fire prevention and mitigation planning, timing for development of the Property, securing outside agency approvals (e.g. PennDOT, PaDEP), and required adherence to the evidence provided in the Application and during the hearings. *Exhibit A-10*.

vv. The Application, exhibits entered at the hearings, including the Proposed Conditions of Approval, and testimony by Applicant's witnesses establish compliance with the general standards for all special exceptions provided in Section 135-383.B of the Zoning Ordinance. *Tr. Day 1, p. 41; Exhibit A-1, Narrative, pp. 12-13; Exhibit A-4, Exhibit A-5; Exhibit A-6; Exhibit A-6; Exhibit A-7; Exhibit A-10; Exhibit A-13*.

ww. For example: The Proposed Development will be properly serviced by all existing public service systems including, but not limited to, police protection, fire protection and utilities pursuant to Section 135-383.B(2) of the Zoning Ordinance. *Tr. Day 1, pp. 23, 41; see also the traffic discussion supra*. As discussed in detail above, the Proposed Use and Proposed Development are properly designed with regard to circulation, parking, buffering, landscaping, lighting, and other applicable and required design standards set forth in the Zoning Ordinance and any other governing law as provided by Section 135-383.B(3) of the Zoning Ordinance. *Tr. Day 1, pp. 41-42*.

xx. As to Section 135-383.B(4) of the Zoning Ordinance, and as discussed above, in Mr. Bittinger's and Mr. Neal's expert opinions, the Proposed Use will not substantially injure or detract from the use of the neighboring properties or from the character of the neighborhood because (i) the Property is in an industrially zoned area with other heavy industrial uses located adjacent to the Property, including Greiner Industries' 450,000 square foot manufacturing facility; (ii) the Application meets, and in several cases exceeds, the requirements

of the Zoning Ordinance related to screening, buffering, setbacks, lighting, and similar requirements designed to protect neighboring properties; (iii) the Property is in close proximity to Route 283 and the 283 Interchange; (iv) large trucks already use the public streets that connect the Property to the 283 Interchange; and (v) the proposed transportation and traffic improvements along Mount Pleasant Road and with the Steel Way Drive Extension mitigate potential harm caused by traffic from the Proposed Use.

yy. As to Section 135-383.B(5), the Proposed Use is not a use normally associated with creating significant hazards such as fire, toxic or explosive hazards. *Tr. Day 1, p. 43.*

63. Finally, the Proposed Use is not different from other warehouses or distribution centers that are larger than 50,000 square feet or that hold products not included in the list provide by Section 135-163.B of the Zoning Ordinance and, as such, the Proposed Use is not more adverse to the general public. *Tr. Day 1, p. 43.*

F. Additional Proposed Conditions of Approval and Mitigating Factors

64. As discussed above, Applicant proposed 28 Conditions of Approval to address requests made by the Township and to address and mitigate Objectors' concerns and objections. *See Exhibit A-10.*

65. In addition to those submitted with Exhibit A-10, Applicant agreed as a condition of approval that it would submit to the Township an executed copy of the redacted lease between the Applicant and tenant of the Property. *Tr. Day 2, pp. 187-88.*

66. Applicant also agreed as a condition of approval that it would obtain a post-occupancy traffic impact study to determine the actual trip generation for the Property and,

thereafter, construct any additional roadway improvements determined by such study to be required for the safe ingress and egress from the Property. *Tr. Day 3, pp. 314-15.*

G. Operation of the Facility

67. Applicant intends to lease the Facility to a third-party. *Exhibit A-1.*

68. The Facility would operate 24 hours a day and seven days a week. *Tr. Day 1, p. 116.*

II. CONCLUSIONS OF LAW

A. Procedural Conclusions

69. Public hearings on the Application were held pursuant to appropriate public notice provided in accordance with the terms of the Zoning Ordinance and the MPC and due process was afforded to all parties during those hearings.

70. Section 135-385 of the Zoning Ordinance and Section 908(9) of the MPC, 53 P.S. § 10908(9), require the Board to render a written decision within forty-five (45) days of the last hearing. The parties stipulated on the record to a schedule that permitted the Board to not render a written decision within the forty-five (45) day period. Rather, this written decision was agreed to be due 30 days after Applicant and Objectors submitted proposed findings of fact and conclusions of law, and such submission was due and delivered to the Township on June 14, 2023 by Applicant [INSERT: “and Objectors _____, _____, _____,…” if/as applicable].

71. Section 912.1 of the MPC, 53 P.S. § 10912.1, provides that where a zoning ordinance identifies special exception uses pursuant to express standards and conditions, the zoning hearing board shall consider applications and decide requests for special exceptions in accordance with the standards and criteria set forth in the ordinance.

72. Section 135-32 of the Zoning Ordinance provides: “Uses permitted by special exception are specifically stated herein and shall be permitted only under the terms, procedures and conditions prescribed in [the Zoning Ordinance].”

73. Section 135-163.B of the Zoning Ordinance permits an industrial use involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, or repair of all reasonable materials, goods and products in a building larger than 50,000 square feet by special exception in the LI-District.

74. Section 135-163.C permits industrial uses involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, or repair of items not specifically referenced by Section 135-162.E of the Zoning Ordinance by special exception in the LI-District.

75. The Application is properly within the jurisdiction of the Board as a special exception.

76. The Proposed Use fits into the industrial use categories set forth in Sections 135-163.B and 135-163.C and is proposed on land zoned in the Township’s LI-District. Therefore, the Proposed Use is permitted on the Property by special exception.

B. Special Exception Case Law

77. Importantly, **a special exception is not an exception to a zoning ordinance**, but instead, is a use which is **expressly permitted** absent a showing of a detrimental effect on the community. *Greaton Props. v. Lower Merion Twp.*, 796 A.2d 1038, 1045 (Pa. Commw. Ct. 2002). In the context of the Zoning Ordinance, a warehouse or distribution center in excess of 50,000 square feet is not an exception from what the Zoning Ordinance permits.

Rather, that use is specifically permitted in the LI-District if the applicable requirements for the special exception are met.

78. Uses permitted by special exception evidence a legislative decision that the particular type of use is consistent with the zoning plan and presumptively consistent with the health, safety and welfare of the community. *Northampton Area Sch. Dist. v. East Allen Twp. Bd. of Supervisors*, 824 A.2d 372, 376 (Pa. Cmwlth. 2003); *Abbey v. Zoning Hearing Bd. of East Stroudsburg*, 559 A.2d 107, 109 (Pa. Cmwlth. 1989). In the context of the Zoning Ordinance, the Township Board of Supervisors already has determined that a warehouse, distribution center, or similar use that is larger than 50,000 square feet and that stores items not listed in Section 135-162.E of the Zoning Ordinance is consistent with the zoning plan and presumptively consistent with the health, safety and welfare of the community. Notably, the Zoning Ordinance does not set any maximum size limitation on the uses.

79. In a special exception hearing, the applicant bears the burden of demonstrating that the use satisfies the applicable **objective** requirements of the zoning ordinance. Once the applicant meets their burden, there is a presumption that the use is consistent with public health, safety and welfare, and **the burden shifts to the opponents**. See *Abbey*, 559 A.2d at 109.

80. Therefore, a special exception that satisfies the objective requirements of the zoning ordinance **must be granted** unless the opponents present sufficient evidence that the use will generate adverse impacts **not normally generated by this type of use** and that these impacts will pose a substantial threat to the health and safety of the community. *Greaton Props.*, 796 A.2d at 1045; *In re Cutler Group, Inc.*, 880 A.2d 39, 42 (Pa. Cmwlth. 2003). In the context of the Application, if the Applicant meets its initial burden, Objectors must present sufficient

evidence that the Proposed Use (i.e., a 1,006,880-square-foot warehouse and related improvements) will generate adverse impacts not normally generated by a warehouse, distribution center, or similar use that is larger than 50,000 square feet and that stores items not listed in Section 135-162.E of the Zoning Ordinance.

81. To defeat a special exception request which meets the specific objective requirements of the ordinance, the opponent's evidence cannot consist of mere speculation, bald assertions, or personal opinions and perceptions of the effect of the use on the community. Rather, opponents must demonstrate that there is a **high degree of probability** that the use **will cause a substantial harm** that is **not normally associated with the proposed use**. *Id.*; *Ruddy v. Lower Southampton Twp. Zoning Hearing Bd.*, 669 A.2d 1051, 1057 (Pa. Cmwlth. 1995). In the context of the Application, if the Applicant meets its burden, Objectors must demonstrate that there is a high degree of probability that the Proposed Use will cause a **substantial harm** that is not normally associated with a warehouse, distribution center, or similar use that is larger than 50,000 square feet and that stores items not listed in Section 135-162.E of the Zoning Ordinance.

C. Objective and Other Applicable Criteria & Regulations

82. Article XXII of the Zoning Ordinance (Specific Use Regulations) does not provide use-specific regulations, objective or subjective, for the uses described in Sections 135-163.B and 135-163.C (i.e., the Proposed Use).

83. Article XVII of the Zoning Ordinance sets forth the requirements for uses in the LI-District and refers to other applicable articles of the Zoning Ordinance, including Article XXIII (General Regulations), Article XXIV (Sign Regulations), and Article XXV (Parking Regulations).

84. Section 135-383.B of the Zoning Ordinance sets forth the general standards that apply to all uses permitted by special exception.

85. As provided in detail in the Findings of Fact above, the Applicant, through its Application and uncontroverted demonstrative and oral testimony, including expert testimony, presented during the hearing, met its burden of proof to establish that the Application and Proposed Use comply with the applicable objective requirements of the Zoning Ordinance, including among others, those provided in Articles XVII, XXII, XXIII, XXIV, XXV, and Section 135-383.B.

86. As provided in detail in the Findings of Fact above, the Applicant also established that the Application and Proposed Use comply with the applicable subjective requirements of the Zoning Ordinance and that Applicant addressed Objectors' concerns, specifically including as to traffic (e.g., Exhibits A-1, A-4, A-10, A-12, and A-13 among others), screening and landscaping (e.g., Exhibits A-1, A-4, A-5, A-6, A-7, A-8, A-9, and A-10), and environmental matters including stormwater management (e.g., Exhibits A-1, A-4, A-5, a-7, and A-10).

87. As the Applicant has demonstrated compliance with the objective requirements of the Zoning Ordinance, there is a presumption that the Proposed Use on the Property is consistent with public health, safety and welfare and the Board must approve the Application unless Objectors presented sufficient evidence that the Proposed Use will generate adverse impacts not normally generated by this type of use and that these impacts will pose a substantial threat to the health, safety and welfare of the community.

88. Objectors did not meet their burden.

89. Objectors did not present sufficient evidence, especially when compared against Applicant's evidence presented above, that the Proposed Use will generate adverse impacts not normally generated by warehouses or distribution centers that are larger than 50,000 square feet or that hold goods not listed in Section 135-162.E of the Zoning Ordinance.

90. Accordingly, the Objectors did not satisfy the well-settled legal burden to defeat the Applicant's special exception request.

91. Although Objectors' argument against the Application ends there, neither testimony from the Objectors or their experts, nor other evidence submitted by Objectors, were sufficient to establish that the potential adverse impacts generated by the Proposed Use, as eliminated or mitigated by the Proposed Conditions of Approval, proposed on-site improvements, and proposed traffic improvements, will pose a **substantial** threat to the health, safety, and welfare of the community.

92. Based on the Application and the testimony and evidence presented at the hearings by the Applicant and other parties, the Board concludes that the Applicant is entitled to an approval of its special exception application.

93. Pursuant to Section 135-383(B)(6) of the Zoning Ordinance and Section 912.1 of the MPC, 53 P.S. § 10912.1, the Board may impose reasonable conditions and safeguards as it deems necessary to implement the purposes of the Zoning Ordinance and the MPC.

III. Decision

94. The Board hereby grants the Applicant's special exception application for the Proposed Use, subject to the following conditions which are consistent with the Proposed

Conditions of Approval (Exhibit A-10), except where terms were modified for consistency throughout this Decision:

a. Landowner Franklin B. Greiner (“Landowner”) shall enter into an Agreement Providing for Grant of Conservation Easement in a form acceptable to the Township Solicitor to preserve and protect the floodplain and wetlands areas at the northern and western portions of the tract identified as Lancaster County Tax Account No. 461-89922-0-0000 which is the subject of the application (the “Property”). Such Agreement Providing for Grant of Conservation Easement may allow some changes to the wetlands in the area of the pond if authorized by the Pennsylvania Department of Environmental Protection or the Army Corps of Engineers if a second building is developed on the Property.

b. Applicant shall construct a roadway across the property of Landowner, identified as Lancaster County Tax Account No. 461-15379-0-0000, to connect Steel Way Drive to Mount Pleasant Road, described as the “extension of Steel Way” in the letter from Applicant’s consultant TPD dated December 22, 2022 (i.e., the Steel Way Drive Extension). The Steel Way Drive Extension shall be included on the land development plan for the Proposed Development and Facility, and Applicant shall provide financial security to secure completion of the Steel Way Drive Extension. The Steel Way Drive Extension shall meet all of the following requirements: (A) The Steel Way Drive Extension shall have a right-of-way width of 60 feet except for necessary turning radii at intersections; (B) If the Steel Way Drive Extension is not to be located within the right-of-way shown on the Final Subdivision and Land Development Plan for Greiner Industries, Inc., recorded at Subdivision Plan Book J-234, Page 14, and conveyed to the Township by Landowner in the Deed of Dedication dated April 18, 2008, and recorded at Document No. 5701997, Applicant must obtain the consent of the Board of Supervisors for such

relocation and shall enter into necessary agreements to enable the relocation of the Steel Way Drive Extension; (C) If the Steel Way Drive Extension is not to be a new street intersecting with Steel Way Drive and proceeding northward, Applicant and Landowner shall, if requested by the Township, enter into an agreement to vacate the existing cul-de-sac turnaround and all portion of Steel Way Drive extending eastward of the Steel Way Drive Extension; (D) The Steel Way Drive Extension shall be completed (other than the final wearing course) prior to the issuance of an occupancy permit for the proposed Facility. The final wearing course for the Steel Way Drive Extension shall be installed within one year after the issuance of an occupancy certificate for the Facility; (E) The Steel Way Drive Extension shall be constructed to the standards of a collector road; and (F) Applicant shall reimburse the Township for all costs associated with any agreements or other action necessary for the Steel Way Drive Extension including, but not limited to, the relocation (if necessary) of the Steel Way Drive Extension from the right-of-way previously conveyed to the Township, vacation of portions of existing Steel Way Drive, approvals from PennDOT for the intersection of the Steel Way Drive Extension and Mount Pleasant Road; acceptance of the Steel Way Drive Extension, and imposition of traffic regulations on the Steel Way Drive Extension.

c. Applicant shall improve the existing intersection of Steel Way Drive and Cloverleaf Road to accommodate larger truck traffic associated with the Proposed Use and Proposed Development as set forth in the letter from TPD dated December 22, 2022, and as shown on the plan prepared by TPD dated January 11, 2023 (the “Steel Way & Cloverleaf Intersection Improvements”). At a minimum, this shall include widening the cartway of Steel Way Drive for a distance of not less than 100 feet from the intersection with Cloverleaf Road; widening the turning radius from Cloverleaf Road onto Steel Way Drive, widening the cartway

of Cloverleaf Road as shown on the plan prepared by TPD, and if required by PennDOT, installation of turning lanes. Landowner shall convey the necessary right-of-way to the Township, and if required by PennDOT, to PennDOT for the Steel Way & Cloverleaf Intersection Improvements. Applicant shall prepare all necessary plans to obtain a highway occupancy permit from PennDOT for the Steel Way & Cloverleaf Intersection Improvements at its sole cost and expense. Applicant shall obtain the required highway occupancy permit for the Steel Way & Cloverleaf Intersection Improvements prior to the release of the final plan for the Proposed Development for recording and shall comply with all conditions which PennDOT may impose. Applicant shall complete the Steel Way & Cloverleaf Intersection Improvements prior to the issuance of an occupancy certificate for the Facility.

d. Landowner shall dedicate additional right-of-way along the frontage of Mount Pleasant Road (SR 4010) to PennDOT or to the Township, as directed by PennDOT. Applicant shall install all improvements to Mount Pleasant Road required by PennDOT or required by the Subdivision and Land Development Ordinance, if allowed by PennDOT (“On-Site Transportation Improvements”). It is the intent of this condition that Applicant install at a minimum all improvements required by the Subdivision and Land Development Ordinance unless PennDOT prohibits such work within its right-of-way.

e. Landowner shall dedicate additional right-of-way along the frontage of Stauffer Road to the Township to provide a 25 feet wide right-of-way from the centerline. Applicant and Landowner shall either install all required improvements to Stauffer Road or shall enter into a deferred improvements agreement relating to such improvements in a form acceptable to the Township Solicitor.

f. Applicant, at its sole cost and expense, shall prepare all necessary plans and legal descriptions for the dedication of additional right-of-way for Mount Pleasant Road and Stauffer Road.

g. Applicant shall obtain all necessary highway occupancy permits from PennDOT for access from the Property to Mount Pleasant Road, for the Steel Way & Mount Pleasant Intersection, and for any storm water management facilities to be installed within the right-of-way of Mount Pleasant Road before a final plan for the Proposed Development is released for recording. Applicant shall submit all applications to PennDOT to the Township for review and comment before submission to PennDOT.

h. No driveway access shall be permitted from the Property to Stauffer Road.

i. Applicant shall require all vehicles other than passenger cars, SUVs and pickup trucks (collectively, "Personal Vehicles") leaving the Property to proceed westward to Cloverleaf Road on the Steel Way Drive Extension. All traffic other than Personal Vehicles exiting the Property shall turn west on Mount Pleasant Road to the Steel Way & Mount Pleasant Intersection. No traffic other than Personal Vehicles may leave the Property and travel eastward on Mount Pleasant Road. Applicant shall install and maintain signage informing drivers of this condition with wording and location of such signage acceptable to the Township Manager.

j. Applicant shall install and maintain barriers acceptable to the Township Engineer to prevent vehicles other than Passenger Vehicles from exiting the Property at either driveway onto Mount Pleasant Road and turning eastward. If it is not possible to design, install and maintain a barrier which will allow Passenger Vehicles to turn east on Mount Pleasant Road while preventing vehicles other than Passenger Vehicles to turn east on Mount Pleasant

Road, then Applicant shall install barriers preventing all traffic from turning east on Mount Pleasant Road. The Board recognizes that PennDOT approval of any design is required, and the Township Engineer shall not unreasonably reject a design that includes barriers that substantially prohibit vehicles other than Passenger Vehicles (or both Passenger Vehicles and vehicles other than Passenger Vehicles) from turning east on Mount Pleasant Road when exiting the Property if PennDOT refuses to approve a more restrictive design.

k. Applicant shall install landscaping at the level shown on the Landscape Plan submitted to the Township on December 22, 2022. All plants shall be native species which shall be identified during the land development process and approved by the Planning Commission. Applicant shall install native meadow pollinator plantings in open space areas. The land development plan shall identify all areas where native meadow pollinator plantings are proposed. Applicant and future owners of the Property shall maintain all vegetation shown on the Landscape Plan submitted to the Township on December 22, 2022. Trees or shrubs which become diseased or die shall be replaced by landscaping meeting all Zoning Ordinance requirements and these conditions within six months.

l. Applicant shall install screening along the Mount Pleasant Road frontage opposite the tracts identified as 2754 Mount Pleasant Road and 2706 Mount Pleasant Road. Such screening shall include a landscaped berm with native trees.

m. The maximum impervious surface coverage on the Property for the development proposed by the application shall not exceed 60 percent.

n. All exterior mechanical and/or HVAC equipment shall be roof mounted. Applicant shall design the Facility to limit the visibility of any roof top mechanical equipment from the properties to the east. This may include architectural treatments which

screen such equipment from the properties to the east. Applicant shall review the screening design with the Planning Commission as part of the land development approval process.

o. Applicant shall construct the Facility in general conformity with the architectural elevations presented as Exhibits A-8 and A-9 at the hearing on January 17, 2023.

p. The Facility will be provided with public water service and public sewer service.

q. The Facility shall be provided with an automatic fire suppression system.

r. Applicant shall prepare a fire prevention and mitigation plan prior to the issuance of an occupancy certificate for the Facility and shall provide the fire prevention and mitigation plan to emergency responders for their review and comment. This shall include, but not be limited to, Northwest Regional Lancaster County Police Department, Fire Department Mount Joy, Rheems Fire Company, and Friendship Fire and Hose Company of Elizabethtown. Applicant shall include the reviewed fire prevention and mitigation plan with the application for an occupancy certificate for the Facility. Applicant and future operators of the Proposed Development shall consult with emergency responders, not less than once each calendar year.

s. As part of the land development approval process, Applicant shall present information on how Applicant will provide a water supply for fire suppression, i.e. either through a water storage tank or by a connection for fire service to the Elizabethtown Area Water Authority (“EAWA”) system. If Applicant shall provide a water storage tank, such tank shall be included on the land development plan and Applicant shall present evidence that the size of the water storage tank is adequate to meet Uniform Construction Code (“UCC”) requirements. If

Applicant proposes to use the EAWA system, Applicant shall provide a written third-party evaluation of the water supply requirements for fire protection of the Facility which shall assess flow, duration and volume requirements for supplying the Facility's automatic fire sprinkler system or system and for manual firefighting. Water supply calculations for the automatic sprinkler system shall include hose stream allowances (NFPA 13). The written evaluation shall also include calculations for the Facility's "Needed Fire Flow" derived using the Insurance Services Office formula. Additional pertinent calculations using other recognized methodology may be included as well. The written report shall include the raw data and formulas used for all calculations. Applicant shall conduct a flow test of the EAWA system being considered for fire protection use. The test shall be performed at a location proximal to the Property. Pressure, flow, and duration (volume capacity) data shall be included in the written report. Applicant shall include a sequential plan for installing infrastructure to provide the required fire flow(s) for the Facility with the land development plan. The plan shall include a construction timeline that assures availability of the necessary water pressure, flow, and volume for fire protection prior to the issuance of an occupancy certificate for the Facility. Included in the timeline shall be provisions for conducting a third-party flow test to verify the availability of adequate water supplies prior to the issuance of the occupancy certificate for the Facility.

t. Applicant shall provide Northwest Regional Lancaster County Police Department with the name and telephone number of an emergency contact person prior to the issuance of an occupancy certificate for the Facility. Applicant and future operators of the Proposed Development shall regularly update such emergency contact information.

u. Applicant shall record a final plan to enable development under this decision no later than two years after the date of this Decision. All construction authorized by this Decision shall be completed no later than four years after the date of this Decision.

v. Applicant shall pay or shall post financial security to secure payment of traffic impact fees for not less than 147 new weekday p.m. peak hour trips prior to the issuance of a permit to enable construction of the Facility. If future information presented during the land development process demonstrates greater than 147 p.m. peak hour trips, Applicant shall pay impact fees based on that greater number. Applicant shall include a note on the land development plan acceptable to the Township Solicitor waiving any rights to request or receive a refund of all or any part of such impact fees. Applicant may enter into an agreement with the Township to allow Applicant to offset payment of impact fees by constructing improvements at the intersection of Steel Way Drive and Cloverleaf Road or to the 283 Interchange. Applicant shall not be entitled to use the costs to extend Steel Way Drive from its present termination to Mount Pleasant Road to offset payment of impact fees.

w. Applicant shall obtain all other necessary permits and approvals for the proposed development including, but not limited to, land development approval from the Township, storm water management plan approval from the Township, erosion and sedimentation control approval from the Lancaster County Conservation District and an NPDES permit. Applicant shall demonstrate that Applicant has obtained all required permits prior to the issuance of a zoning permit and Uniform Construction Code permit for the Facility.

x. If PennDOT requires that the Township be the applicant or co-applicant for any permit or approval, Applicant shall enter into an agreement with the Township pursuant to which Applicant shall be responsible for all costs associated with such permit

application, completion of all improvements required by such PennDOT approval, and compliance with all conditions on the PennDOT approval. Such agreement shall be recorded and shall bind the Applicant, the Landowner, and all future owners of the Property.

y. Applicant shall reimburse the Township for reasonable costs of reviews by the Township Engineer and Township Solicitor of the special exception application and attendance at hearings before the Board, and for reasonable costs of review of plans and documents and, if necessary, costs of preparation and recording of the Storm Water Management Agreement, Agreement Providing for Grant of Conservation Easement, co-applicant agreements, or other documents by the Township Solicitor and for other reasonable fees and costs associated with the special exception application, Subdivision and Land Development Ordinance, Storm Water Management Ordinance, and PennDOT applications and plans and inspection of improvements, within 30 days after receipt of an invoice for such fees.

z. Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearings, except as modified by these conditions. This shall include, but not be limited to, each finding of fact set forth in this Decision.

aa. Applicant shall provide to the Township an executed copy of the redacted lease between the Applicant and tenant of the Property.

bb. Applicant shall obtain a post-occupancy traffic impact study to determine the actual trip generation for the Property and construct any roadway improvements required by such study.

cc. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the MPC.

dd. The foregoing conditions shall be binding upon the Landowner, the Applicant and their respective personal representatives, heirs, successors and assigns.

Decision made this ___ of _____, 2023.

ZONING HEARING BOARD FOR THE
TOWNSHIP OF MOUNT JOY

Attest:

By: _____
Gregory Hitz, Sr., Chairman

The undersigned certifies that a copy of this Decision has been personally or by First Class Mail, postage prepaid, served upon:

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