For Official Use Only:
Amount:_____ Date:_____
Check/Cash:_____ Receipt:_____
Received By:_____

UPPER MOUNT BETHEL TOWNSHIP
387 YE OLDE HIGHWAY, PO Box 520
MOUNT BETHEL, PA 18343

# APPLICATION TO THE ZONING HEARING BOARD

**Please fully complete this application in accordance with the attached "Instructions to Applicant". Applications that are not fully completed will be returned as "Incomplete".**

1. Applicant(s) Name: RPL East, LLC Phone: 610-332-3300

   Address: 559 Main Street, Suite 300 Bethlehem, PA 18018

2. Attorney for Applicant(s) Kaplin Stewart Meloff Reiter & Stein, P.C. Phone: (610) 260-6000

   Address: 910 Harvest Drive, P.O. Box 3037, Blue Bell, PA 19422

3. Owner of Property: Bangor Area Commercial and Industrial Redevelopment Authority Phone: 610-332-3300

   Address: 123 Five Points Richmond Road, Bangor, PA 18013

4. Type of Request:
   ( ) Special Exception ( ) Variance ( ) Appeal From Action of Zoning Officer (X) Other

5. Provide a Brief Description of Request: Validity Challenge Pursuant to Sections 909.1(a)(1), 53 P.S. § 10909.1(a)(1) and 916.1(a)(1), 53 P.S. § 10916.1(a)(1), of the Pennsylvania Municipalities Planning Code. Alternatively, a request for favorable use class determination pursuant to Sections 350-6.A(2)(b), 350-14.B and 350-40.C(1)(c) of the Zoning Ordinance.

6. Location of Property: 5027 River Road, Mt Bethel, PA 18343

7. Tax I.D. Number (Map, Block, & Lot #): C12 5 6 0131 Total Acres: 151.9

   (a) Lot Area: 6,616,764 s.f. (b) Lot Width: 7,383' s.f. (c) Lot Depth: 1,410' ft

8. Present Use: Vacant Land, Retired Coal Generating Station

9. Proposed Use: Data Center Campus and Electric Generation Plant

10. Zoning District for this Property is Identified as: I-3

11. ~~Request for Special Exception, Special Use~~ or Interpretation:
    (a) Proposed use or structure is consistent with the Zoning District requirements of the Township's Zoning Ordinance per section: 350 Attachment 2

    (b) Proposed use or structure is consistent with such other standards as required by the Township's Zoning Ordinance per section: 350-15.H & I

(c) Proposed use or structure is consistent with the Township's Subdivision and Land Development Ordinance and other Ordinances (list other applicable Township Ordinances that may apply):
Floodplain Management, Grading, Noise, Stormwater Management, Uniform Construction Code, etc.

(d) Applicant(s) requests that the Zoning Hearing Board interpret Section (s) 350-6.A(2)(b), 350-14.B 350-40.C(1)(c), 350-15.H & I of the Township's Zoning Ordinances.

12. Request for a Variance:
Applicant believes that the variance should be granted because (attach additional page if necessary):

(a) Applicant is unable to make reasonable use of the property for the following reasons: N/A

(b) The proposed variance will not alter the essential character of the neighborhood for the following reasons:

N/A

(c) The proposed variance is consistent with the following Section of the Zoning Ordinance:

N/A

13. Applicant Appeals from the Order, Requirement, Determination, or Decision of the Zoning Officer or other Township Official made on N/A, as follows (attach all relevant documents):

N/A

14. The Plot Plan (with dimensions or drawn to scale), drawings, sketches and/or other exhibits attached hereto are made a part hereof.*

I do hereby certify that the facts set forth in this application and the attached exhibits are true and correct to the best of my knowledge.

RPL East, LLC

Applicant Signature — 9/22/2026 Date — Co-Applicant Signature — Date

Louis P. Pekter, III, President

Attach other comments or remarks as needed.

NOTICE TO THE APPLICANT

The following information is provided as a reference tool only. If your application requires the submission of a site plan (Section 6.800 et seq. of the Township Zoning Ordinance) and site plan review by the Township Planning Commission, it is your responsibility to see that the appropriate number of certified site plans are filed with the Township; and it is your responsibility to see that the site plan is placed on the agenda of the Township Planning Commission so the Commission can timely review the plan and make its recommendation to the Zoning Hearing Board and/or Board of Supervisors.

*When required 21 plans will need to be submitted.

7.405 Referral To Planning Commission - The Zoning Hearing Board shall refer to the Planning Commission all applications for Special Exceptions, Conditional Uses, requests for curative amendments and any other applications or appeals which, in the opinion of the Zoning Hearing Board, require review by the Planning Commission. In its review, the Planning Commission shall determine compliance with the standards and criteria set forth in this Ordinance, and in all cases may report in writing its findings and recommendations to the Zoning Hearing Board or Supervisors within 14 days, as required by this Ordinance. If such report is not received by the Board or by Supervisors within said time period, the Board or Supervisors may then proceed to final action on the case

2.276 Site Plan - A Plan which includes an accurate layout of the zoning proposal in map form drawn to scale, including all existing features, soils and topographic information of the site, and all dimensions and design features of the proposal fully shown, including all features and proposed infrastructure required for review by the Township.

The Site Plan must also include information to determine compliance with the Performance Standards and other requirements of this Ordinance.

A Site Plan is required to be submitted for all proposed "Special Exception" and "Conditional Uses" and for any other uses requiring a Site Plan Review as identified in this Ordinance.

Site Plan must first be reviewed by the Planning Commission where recommendations will be submitted to the appropriate body responsible for taking action on the Plan (Zoning Hearing Board, Supervisors or Zoning Officer).

2.282 Special Exception - A "Special Exception" is a use which may be granted or denied pursuant to express standards and criteria established in this Ordinance. Requests for such "Special Exceptions" shall be decided by the Zoning Hearing Board after a review and recommendation from the Planning Commission and after a hearing to determine compliance with said standards and criteria.

6.800 SITE PLAN REVIEW

6.801 Purpose and Procedure - Site Plan Review and the submission of a Site Plan is required herein for all Special Exception and Conditional Uses, or for any other use requiring such review in accordance with the requirements of Article 4 or other provisions of this Ordinance. The following Site Plan procedure shall be followed to ensure the safe and efficient movement of traffic, adequate drainage and connection to utilities, compliance with other applicable regulations and to promote the development of an attractive and well-planned Township, to enhance sound site planning and to best serve the interests of public health, safety and general welfare and with the objectives of this Ordinance.

6.802 Optional Sketch Site Plan Review Procedure - In lieu of submittal of all of the site plan requirements itemized below, the applicant may elect to submit a preliminary Sketch Site Plan, containing lesser information, for unofficial review by the Planning Commission. Such Optional Sketch Site Plan shall be for the purpose of indicating to the Planning Commission the general nature and intent of the proposal which will enable the Commission to present its initial considerations for the purpose of guiding the developer in the preparation of the official final Site Plan, in accordance with these Zoning requirements. The AOptional Sketch Site Plan@, if submitted, shall not eliminate the submittal of a final AOfficial Site Plan@ as required herein.

The entire purpose of this optional procedure is to facilitate the proper development of a Site Plan, as required herein and to prevent unnecessary expenses associated with the development of a Site Plan. This optional procedure shall be considered to be a convenience for the applicant and shall not constitute an official zoning permit application or submission and shall not convey any benefits or assurances to the applicant which he would not otherwise have had if such an Optional Sketch Site Plan were not submitted by the applicant. All such optional plans shall be clearly marked with the words "Optional Sketch Site Plan".

6.803 Site Plan Requirements - The official Site Plan shall include the following information:

a. An application for a Use located in a Use Class requiring Site Plan Review, as required by this Ordinance, shall be submitted to the Zoning Officer. The applicant shall also submit five complete sets of site plans certified by a registered engineer, surveyor, architect or Community Planner with AICP Certification.

b. When a site plan has been officially submitted, it shall be placed on the Planning Commission agenda for review at its next regular meeting, provided the official submission is made ten days or more before the regular meeting.

c. Within 45 days after the official submission of a site plan, the Planning Commission shall make a written recommendation to the Zoning Officer, the Zoning Hearing Board or the Supervisors, depending on whether the zoning permit requested is for a Permitted Use, a Special Exception Use or a Conditional Use respectively, on whether the Plan should be approved or disapproved, including any conditions on which an approval should be based. The written recommendation shall include the underlying findings and reasons affecting the Planning Commission's recommendation. In making such a recommendation, the Planning Commission may receive advice and review comments from the Township's Engineer or any other Competent Review Authority designated by the Township.

d. The appropriate body (Zoning Officer, Zoning Hearing Board or the Supervisors) shall take action by approving or disapproving the plan either within 45 days after receiving the Planning Commission's written recommendation, but no later than 90 days after the site plan is officially submitted. The Zoning Officer shall inform the applicant in writing of the action taken by the appropriate body, including the conditions on which are attached to any approval and shall issue any applicable permit.

e. Site Plan approval shall neither relieve the applicant from any other provisions of this Ordinance nor constitute a recommendation for a variance or other relief that the applicant may seek from the Zoning Hearing Board.

f. The following information shall be included on the Site Plan. Any such information which is not considered applicable to the proposed use may be waived by the Zoning Hearing Board or the Zoning Officer.

1. A statement as to the proposed use of the building or land.
2. A site layout drawn to a scale of not less than one inch equals 100 feet showing the location, dimensions and area of each lot, the location, dimensions and height of proposed buildings, structures, streets, roads, and any existing buildings in relation to property and street lines. If the application relates to property which is scheduled to be developed in successive stages, such plans shall show the relationship of the portion scheduled for initial development to the proposed layout of the entire property.
3. The location, dimensions and arrangements of all open spaces and yards, landscaping, fences and buffer yards, including methods and materials to be employed for screening.
4. The location, size, arrangement and capacity of all areas to be used for motor vehicle access, off-street parking, off-street loading and unloading, and provisions to be made for lighting such areas.
5. The dimensions, location and methods of illumination for signs and exterior lighting.
6. The location and dimensions of sidewalks and all other areas to be devoted to pedestrian use
7. Sanitary and storm water facilities and connections. Provisions to be made for treatment and disposal of sewage and industrial wastes, water supply and storm drainage. Submission of a Storm water Management Plan with supporting calculations shall be required.
8. The capacity and arrangement of all buildings used or intended to be used for dwelling purposes, including information on total land area, area to be reserved in common open space, density, maximum building coverage, total area to be covered with impervious surfaces and other information which will assist the Commission in determining compliance with this Ordinance.
9. A description of any proposed use in sufficient detail to permit the Commission to determine compliance with the Performance, Traffic Impact, Environmental Protection and Community Impact Analysis requirements set forth in Section 4.300.
10. Necessary information assuring lot size and density requirements.
11. Site topographic contours shall be provided as follows:

- Two foot intervals on tracts with grades of up to 5%
- Five foot intervals on tracts with grades exceeding 5%

12. All proposed site grading; drainage provisions; road, driveway and parking lot construction and proposals.
13. A key map showing the entire project and its relation to surrounding properties and existing building thereon.
14. Soils, slopes, floodplain delineations and the boundaries of all Overlay District Areas set forth in Article 5.
15. Certification by engineer or surveyor.
16. Certification of ownership and acknowledgment of plan by owner or developer.

6.804 Site Design Guidelines - In addition to the requirements of Section 6.803, the following guidelines are presented to assist the applicant in the preparation of site and building plans and to assist the Planning Commission in the review of all site plans.

a. Preservation of Landscape - Preserve the landscape in its natural state by minimizing tree and soil removal. Ensure that grade changes are compatible with the general appearance of neighboring developed areas.

b. Relation of Proposed Buildings to Environment - Relate proposed structure(s) harmoniously to the terrain and to existing buildings that have a visual relationship to the proposed structure(s). To achieve this favorable relationship between existing and proposed uses, create focal points with respect to avenues of approach, terrain features or other buildings and relate open space between all existing and proposed buildings.

c. Drives, Parking and Circulation - For vehicular and pedestrian circulation, including walkways, interior drives and parking, give special attention to the location and number of access points to public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, arrangement of safe and convenient parking areas. Design these vehicular and pedestrian areas to enhance the appearance of and access to the proposed buildings and structures and to the neighboring properties.

d. Surface Water Drainage - Give special attention to proper site surface drainage to ensure that removal of surface waters will not adversely affect either neighboring properties or the public storm drainage system. Remove and efficiently carry away all storm water from all roofs, canopies and paved areas. Manage surface water in all paved areas to permit vehicular and pedestrian movement.

e. Utility Service – Place electric and telephone lines underground, where possible or required by the Township Subdivision and Land Development Ordinance. Locate, paint and undertake any other treatment to ensure that any6 utilities which remain above ground will have a minimal adverse impact on neighboring properties.

f. Advertising Features - Ensure that the size, location, lighting and materials of all permanent signs and outdoor advertising structures or features will enhance rather than detract from the design of proposed buildings and structures and the neighboring properties.

g. Special Features - Provide needed setbacks, screen plantings and other screening methods for exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures and similar accessory areas and structures to help make them compatible with the existing or contemplated site design and with neighboring properties.

h. Performance, Traffic Impact and Environmental Protection Requirements - Adequately address all applicable requirements identified in Section 4.300.

i. Subdivision and Land Development Ordinance Requirements - Where the zoning proposal requires approval under the Township's Land Subdivision and Development Ordinance, the Site Plan shall also address the major requirements of that Ordinance.

6.900 MISCELLANEOUS PROVISIONS

6.901 Screening Requirements - Adequate screening, as described herein, shall be provided along the front, side, and rear boundaries of any

industrial, manufacturing, commercial, public or resort use which is carried on outside of any completely enclosed building, or for any off-street parking or loading area for more than five vehicles, which abuts a residential area or zoning district or which is directly visible or across a Street or alley from a residential area, or along the boundaries of any other use where such screening is required by this Ordinance, or for any special exceptions or conditional use as required by the review of the Board or the Supervisors.

Screening shall be provided in accordance with applicable requirements of the Township Subdivision and Land Development Ordinance (See Attachment E).

Open construction or storage yards, Solid Waste transfer stations and recycling centers, Detention Centers or similar uses as determined by the Board shall be screened in accordance with the provisions of this section.

Screening shall also be provided to prevent infusion of light and glare into residential areas from outdoor lighting fixtures provided by commercial, industrial and other operations (See Section 6.909).

The Zoning Hearing Board or the Supervisors (for Special Exception or Conditional Uses, respectively) may waive any screening requirement, in part or in its entirety, where natural terrain considerations eliminate the need for such a screen or where access considerations or adjoining development would not substantially benefit from such a screen, as determined by either body.

Such screening shall conform to the applicable fence requirements of Section 6.305 and consist of a visual screen or obstruction of sufficient height, but not less than six feet high, to effectively obscure the area being screened from adjoining uses. Such a screen or obstruction shall consist of a suitable permanent fence or wall or of appropriate planting materials such as shrubs, hedges or trees located within a buffer strip having a minimum width of five feet. Such fence, wall, or planting materials shall be maintained in good condition without any advertising thereon.

Any space between such fence, wall or planting materials and adjoining lot lines shall be attractively surfaced and/or landscaped with grass, hardy shrubs or evergreen ground cover and maintained in good condition.

6.902 Slope of Yards - The surface area of any yard of open space adjacent to a building or structure shall be graded so that surface water will be drained away from any such structure.

6.903 Design of Highway (Non-Residential) Development - It is the objective of this Ordinance to encourage the orderly development of commercial, industrial, and other nonresidential parcels in a manner which will provide for proper access and reduce traffic conflicts and provide for the health and welfare of the population of the municipality. This shall be accomplished as follows:

a. The design of streets, service drives and pedestrian ways shall provide for safe, convenient and hazard-free internal circulation of goods, persons and vehicles.

b. Except as provided in Section 5.303 non-residential parcels shall be limited to no more than one driveway access point from the street or highway from which they derive their principal access. Such driveway access points shall not be more than 40 feet wide and shall be designed in a manner which will minimize their interference with any traffic movements on the street or highway. The need for a second access point may be requested as a Special Exception, provided that it does not create potential unsafe traffic conflicts.

c. Where a number of individual parcels or buildings are being developed jointly, or where a parcel or building is being developed adjacent to another parcel used or suitable for non-residential development consideration shall be given to the following:

1) The location and planning of driveway access points to permit their joint use by adjoining parcels so as to minimize the number of intersections with the street or highway from which they derive their access.
2) The development of parking and loading areas which permit convenient traffic circulation between adjoining parcels.
3) The development of pedestrian walkways between adjoining parking areas and buildings.
4) The provision of landscaping and other features which will enhance the usability, character and attractiveness of the area.

d. U.S. Route 611, major arterial highway is also subject to the Section 5.300, an Overlay District for requirements of U.S. Route 611.

6.904 Animals and Fowls - In any district except for the OSC and A-i Zoning Districts the establishment, maintenance, and operation of boarding stables, dog kennels, boarding kennels, aviaries, or similar facilities for the housing, boarding, service, treatment, care, breeding or sale of animals and fowls is prohibited, except for animal hospitals, kennels and veterinarian offices as set forth in Article 4.

The provisions of this Section shall not apply to the keeping of pets, or other animals for non-commercial purposes which are otherwise permitted by this Ordinance and which are the personal property of persons residing on the premises, provided that such animals shall not create nuisance or health problems.

6.905 Size of Dwellings - In order to promote the public health, safety and welfare of occupants residing in residential dwelling structures, the following minimum floor areas for human habitation shall be required in all dwelling units designed for permanent occupancy. Where a greater minimum floor area is required by any applicable Code or Ordinance that higher minimum shall apply.

**BEFORE THE UPPER MOUNT BETHEL TOWNSHIP**
**ZONING HEARING BOARD**

In Re: Validity Challenge of )
RPL East, LLC )

**VALIDITY CHALLENGE**
**AND REQUEST FOR FAVORABLE USE CLASS DETERMINATION**

## I. RELEVANT PROCEDURAL BACKGROUND

1. RPL East, LLC ("RPL East") files the within application ("Application") for Validity Challenge to the Upper Mount Bethel Township ("Township") Zoning Ordinance ("Zoning Ordinance") pursuant to Sections 909.1(a)(1), 53 P.S. § 10909.1(a)(1) and 916.1(a)(1), 53 P.S. § 10916.1(a)(1), of the Pennsylvania Municipalities Planning Code ("MPC"), and Section 350-40.C(1)(f) of the Zoning Ordinance, in which it asserts that the Zoning Ordinance is unlawfully exclusionary with respect to data center uses and seeks site specific relief. In the alternative, RPL East's Application requests a favorable use class determination from the Board pursuant to Sections 350-6.A(2)(b), 350-14.B and 350-40.C(1)(c) of the Zoning Ordinance that RPL East's proposed Data Center (defined below) is permitted by right where proposed.

2. RPL East has proposed to develop a data center facility ("Data Center") and an electric generation facility ("Generating Station") on approximately 151.9 acres of land in the Township's I-3 Heavy Industrial located east of River Road, Upper Mount Bethel Township, Northampton County, PA 18343 ("Subject Property"). A copy of a plan depicting the proposed Data Center development is attached hereto as Exhibit A.

3. RPL East previously approached the Township to discuss how the proposed Data Center would be classified under the Zoning Ordinance. On April 29, 2024 the Township Zoning Officer issued a Zoning Determination that the Data Center is a use permitted by right in the I-2 District pursuant to Sections 350-15.H(3)(c) of the Zoning Ordinance as a use constituting

"Research facilities, laboratories, high technology industries, medical research and pharmaceutical industries, research centers, educational institutions and technical centers to support these activities which do not jeopardize the health and welfare of employees and the Township as a whole." A copy of the April 29, 2024 Zoning Determination is attached hereto as Exhibit B.

4. The same use classification carries into the I-3 Heavy Industrial District. Section 350-15.I(2) of the Zoning Ordinance provides that land in a planned industrial park located in the I-3 Industrial Zoning District may be used or occupied by one or more of the industrial uses permitted by right or by special exception in the I-2 or I-3 Industrial Zoning District pursuant to Use Class 8 of the Zoning Ordinance. The "high technology industries" use on which the Zoning Officer relied is a Use Class 8 use under Section 350-15.H(3)(c). It is therefore permitted by right within a planned industrial park located in the I-3 District. See Zoning Ordinance § 350-15.I(2).

5. Additionally, the Township posted a draft data center zoning ordinance amendment ("Proposed Data Center Amendment") on its website from 2025 until present, which provides that "by Township Ordinance No. 2020-02, the Zoning Ordinance was amended to allow for the development of new Industrial Parks attractively developed and designed to attract new industry…The Township's zoning officer issued a written zoning determination that a data center was a by-right use in the Planned Industrial Park Use Class 8A." A copy of Proposed Data Center Amendment is attached hereto as Exhibit C.

6. With its Validity Challenge, RPL East asserts that the Zoning Ordinance is unlawfully exclusionary with respect to data center uses. Consequently, RPL East seeks a decision from the Board that it is entitled to site specific relief to construct its proposed Data Center in the Township in the location and manner described herein and in the accompanying plans.

7. In the alternative, RPL East requests a favorable use class determination

from the Board pursuant to Sections 350-6.A(2)(b), 350-14.B and 350-40.C(1)(c) of the Zoning Ordinance the Data Center is permitted by right within a planned industrial park located in the I-3 District as a "high technology industry" or "general industrial" use on the Subject Property where the Data Center is proposed.

## II. RELEVANT FACTUAL BACKGROUND

### A. The Subject Property

8. The Subject Property consists of approximately 151.9 acres of land controlled by RPL East located along east side of River Road, Upper Mount Bethel Township, Northampton County, PA 18343 in the Township's I-3 Heavy Industrial District, which is identified as Northampton County Tax Parcel Id. No. C12 5 6 0131.

9. The Subject Property is the site of the former Portland Generating Station and has been devoted to heavy industrial uses, including power generation for decades and is an ideal data center site. The Township previously approved preliminary and final land development plans submitted by RPL East for the Subject Property to develop an industrial warehouse park development. As such, the Township has already recognized that the site is appropriate for industrial scale uses.

### B. The Proposed Data Center

10. The proposed Data Center will establish a state-of-the-art campus designed to support digital infrastructure needs. The campus will be developed in a manner that maximizes the site's proximity to existing electrical transmission facilities while preserving environmentally sensitive areas and maintaining compliance with applicable Township ordinances and other regulatory requirements.

11. The Data Center will consist of data center buildings, substations and stormwater management facilities in the approximate locations depicted on Exhibit A. The Data Center campus is organized into multiple development clusters connected by a network of private internal roadways designed to accommodate employee traffic, service vehicles, and emergency access.

12. A comprehensive stormwater management system is proposed throughout the Data Center campus, consisting of multiple stormwater management facilities strategically located to control runoff quantity and quality in accordance with Pennsylvania Department of Environmental Protection requirements and Township ordinances.

13. The plan for the Data Center incorporates substantial setbacks, landscape buffers, utility corridors, and stormwater management areas to provide separation from adjacent properties and environmentally sensitive features. Building placement and infrastructure have been arranged to respect surrounding land uses while maximizing operational efficiency.

14. The proposed Data Center represents a strategic investment in critical digital infrastructure that will provide significant economic benefits to the Township and Northampton County while complying with applicable land development, zoning, and environmental regulations.

## III. RELEVANT REGULATORY FRAMEWORK AND LEGAL STANDARDS

### A. The Pennsylvania Municipalities Planning Code

15. The MPC is the planning enabling statute that governs the land-use powers of all Pennsylvania municipalities, except for Pittsburgh and Philadelphia. *Gary D. Reihart, Inc. v. Twp. of Carroll*, 409 A.2d 1167, 1170 (Pa. 1970). It authorizes the governing body of each municipality to enact zoning ordinances and maps, "in accordance with the conditions and

procedures set forth in [the MPC]." 53 P.S. § 10601.

16. Zoning ordinances divide a municipality into zones or districts; specify uses permitted in each district; and impose various regulations regarding the size and location of various uses. 53 P.S. § 10603(c).

17. Section 916.1(a) of the MPC provides that a "landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either: (1) to the zoning hearing board under section 909.1(a); or (2) to the governing body under section 909.1(b)(4), together with a request for a curative amendment under section 609.1." 53

P.S. § 10916.1.

18. Section 909.1(a) of the MPC provides that the zoning hearing board shall have "jurisdiction to hear and render final adjudications…for substantive challenges to the validity of any land use ordinance." 53 P.S. § 10909.1.

19. Section 916.1(c)(1) of the MPC provides that "[i]n challenges before the zoning hearing board, the challenging party shall make a written request to the board that it hold a hearing on its challenge. The request shall contain the reasons for the challenge." 53 P.S. § 10916.1(c)(1).

**B. The Zoning Ordinance**

20. Section 350-40.C(1)(f) of the Zoning Ordinance similarly provides that the zoning hearing board shall "be responsible for… substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to 53 P.S. §§ 10609.1 and 10916.1(a)(2)." *See* Zoning Ordinance § 350-40.C(1)(f).

21. The Zoning Ordinance does not specifically define or provide for "data center" type uses.

22. Uses permitted in the I-2 District and in Planned Industrial Parks to be located on land located in the I-3 District are governed by Sections 350-15.H & I of the Zoning Ordinance and with respect to the I-3 District, by Attachment F thereto.

23. In accordance with Section 350-14.A, Section 350-15.H and Section 350-15.I(2) of the Zoning Ordinance, Use Class 8 (General Industrial Uses) are permitted by-right within a planned industrial park located on land in the I-3 Industrial Zoning District, and Section 350-15.H.(3)(c) specifically designates subcategories of "General Industrial" uses that are permitted by right, one of which is "Research facilities… technology industries…research centers…and technical centers to support these activities…" *See* Zoning Ordinance, § 350-15.H(3)(c).

24. The I-3 Heavy Industrial District was created by Township Ordinance No. 2000-5, which is included as Attachment F to the Zoning Ordinance ("Attachment F"). Attachment F established the I-3 District on approximately 190 acres located between River Road and the Delaware River, and set forth the use, height and dimensional regulations applicable in that District. *See* Attachment F.

25. Section 350-15.I(2) of the Zoning Ordinance was adopted later in time, by Township Ordinance No. 2020-02 (adopted September 9, 2020), and speaks specifically to planned industrial parks located on land in the I-3 Industrial Zoning District. It provides that such parks may be occupied by one or more of the industrial uses permitted by right or by special exception in the I-2 or I-3 Industrial Zoning District pursuant to Use Class 8. To the extent the use provisions of Attachment F are inconsistent, Section 350-15.I(2) — being both later in time and specific to planned industrial parks in the I-3 District — controls. *See* Zoning Ordinance § 350-15.I(2).

26. Attachment F separately permits by right in the I-3 District public utility buildings, structures and facilities and electric power generation and operations, including electrical generation and transmission facilities, switching, transmission towers, equipment, cooling structures, water treatment and water storage, fuel supply and storage, and ancillary and accessory uses and services. See Attachment F §§ 3.1302A, 3.1302C. The substations and related electrical infrastructure depicted on Exhibit A are therefore permitted by right on the Subject Property. None of the uses prohibited in the I-3 District by Attachment F § 3.1305 reaches a data center use.

27. Section 350-9 of the Zoning Ordinance defines "use class subcategory" as:

> Within any single use class, those uses which are considered to be similar or of the same type or impact are included in the same paragraph in § 350-14. Where a use is proposed by a zoning applicant, which is not specifically listed in any specific Use Class then the Zoning Hearing Board may determine the use class subcategory (as defined herein) which is most similar to the proposed use and said proposed use shall be subject to all of the requirements of said use class subcategory, if so approved by the Zoning Hearing Board.

*See* Zoning Ordinance § 350-9.

28. Section 350-6.A(2)(b) of the Zoning Ordinance further provides the following with respect to uses that are not specifically listed in the Zoning Ordinance:

> All specific land uses in this chapter are classified into use classes in § 350-14. Where a specific use is proposed by a zoning applicant which is not specifically listed in any specific use class, then the Zoning Hearing Board may determine the use class subcategory (as defined herein) which is most similar to the proposed use and said proposed use, if approved by the Board, shall be subject to all of the requirements of said use class subcategory, subject to the requirements of §§ 350-18 and 350-40C(1)(b).

*See* Zoning Ordinance § 350-6.A(2)(b).

29. Section 350-40.C(1)(b) of the Zoning Ordinance provides that the Board has to power to hear and decide all requests for interpretation under the Zoning Ordinance. *See* Zoning Ordinance § 350-40.C(1)(b).

30. Section 350-40.C(1)(c) of the Zoning Ordinance provides the following with respect to unlisted uses:

> The Zoning Hearing Board may determine that a use proposed for location in any zoning district may or may not be similar to other uses permitted in a specific use class or use class subcategory as defined herein. Therefore, in such a case it may or may not be permitted as a similar use in that use class. Such a determination shall be based on the following criteria:
>
> (1) That this use is similar to and/or compatible with other uses permitted in the district.
>
> (2) That the use does not adversely affect or create nuisances for adjoining residential areas.
>
> (3) That this use does not generate traffic loads, congestion or excessive parking requirements in the district which would be detrimental to other uses in the district.
>
> (4) That the use does not detract from or substantially differ from or exhibit any influences, emissions or glare which are detrimental to the health, safety, welfare or morals of other persons residing in or undertaking uses or other activities in the area.

*See* Zoning Ordinance § 350-40.C(1)(c).

**C. Legal Framework for Exclusionary Validity Challenges in Pennsylvania**

31. All municipalities must provide for all legitimate uses somewhere in the municipality. *LaRock v. Board of Supervisors of Sugarloaf Twp*., 866 A.2d 1208 (Pa. Cmwlth. 2005). *Id*. If a use is not provided for, it results in unconstitutional exclusionary zoning. *Id.* Exclusionary ordinances takes two forms: *de jure* and *de facto*. *Caln Nether Company, L.P. v. Board of Supervisors of Thornbury Township*, 840 A.2d 484, 491 (Pa. Cmwlth. 2004).

32. *De jure* exclusion exists where the ordinance, on its face categorically bans or does not permit a legitimate use. *Id. De facto* exclusion exists where an ordinance permits a use on its face but, when applied, acts to prohibit the use throughout the municipality. *Id.*

33. With respect to *de jure* exclusionary challenges, the Commonwealth Court has explained:

> The fact that a zoning ordinance does not contain a specific provision addressing a proposed use is not, in and of itself, a basis for finding an unconstitutional exclusion of that use. Where an ordinance does not mention a specific use, we must determine whether the proposed use is included within another use that has been specifically provided for. When a proposed use can be considered within another zoning classification or, where a zoning ordinance is broad enough to encompass the proposed use, there is no *de jure* exclusion.

*Bloomsburg Indus. Ventures, LLC v. Town of Bloomsburg*, 242 A.3d 969, 978 (Pa. Cmwlth. 2020) (internal citations omitted).

34. The right to seek variance relief from a zoning hearing board does not equate to providing for a lawful and legitimate use within a municipality. *See Pennsylvania Zoning Law and Practice* § 6.1.3 – Robert S. Ryan (addressing why the availability of variances for individual properties is not a proper planning justification); *Shuttle Dev. Corp. v. Upper Dublin Twp*., , 514, 338 A.2d 777, 779 (Pa. Cmwlth. 1975); *Kaufman & Broad, Inc. v. Bd. of Sup'rs of W. Whiteland Twp*., 340 A.2d 909, 910 (Pa. Cmwlth. 1975).

35. If the zoning hearing board determines that the ordinance is exclusionary with respect to a specific use, the applicant challenging the ordinance is entitled to site specific relief, which provides that an applicant should be permitted to place its development in the area proposed in the plans submitted with the challenge. *See Appeal of Miller and Son Paving Inc.*, 636 A.2d 274, 277 (Pa. Cmwlth. 1993).

36. "A ruling that a zoning ordinance totally excludes a legitimate use is not to be enforced prospectively but must apply to the party who [sic] successfully litigated that ordinance's invalidity. As the Pennsylvania Supreme Court stated in *H.R. Miller Co*[.] *v. B*[*d.*] *of Supervisors*, 529 Pa. 478 [485,] 605 A.2d 321 [324-25] (1992), 'where the cause of an ordinance's invalidity is a *de jure* exclusion of a legitimate use, ... the sole remedy is to allow the use

somewhere in the municipality, and equity dictates that this opportunity fall to the successful litigant/landowner.'" *Atiyeh v. Bd. of Comm'rs of Twp. of Bethlehem*, 41 A.3d 232, 236 (Pa. Cmwlth. 2012).

## IV. THE BASIS FOR THE VALIDITY CHALLENGE

37. Here, if data center uses are not considered a "high technology industry" or a "general industrial" use, then there is no other use listed in the Zoning Ordinance that could conceivably encompass data center uses.

38. Accordingly, if the Board determines that data center uses are not encompassed within the listed uses of "high technology industry" or "general industrial," it is clear the Zoning Ordinance is *de jure* exclusionary with respect data center uses because data center uses would not be permitted anywhere within the Township.

39. Therefore, the Zoning Ordinance is substantively invalid with respect to data center uses and RPL East is entitled to site specific relief to develop the Data Center in accordance with the plans submitted herewith.

40. RPL East requests that public notice of the hearing indicate that the validity of the Zoning Ordinance is in question and identify the place and times where this Validity Challenge can be examined by the public.

41. RPL East further requests that the hearing be held pursuant to such applicable standards as are set forth in Section 916.1 of the MPC, 53 P.S. § 10916.1.

## V. REQUEST FOR USE SUBCLASS DETERMINATION

42. In the alternative to its Validity Challenge, RPL East's Application requests that the Board determine that the proposed Data Center is most similar to uses in the "high technology industry" and "general industrial" use categories, which uses are permitted by right in

the I-2 District and, within a planned industrial park, in the I-3 District. *See* Zoning Ordinance § 350-9; 350-14 ("Where a use is proposed by a zoning applicant, which is not specifically listed in any specific Use Class then the Zoning Hearing Board may determine the use class subcategory (as defined herein) which is most similar to the proposed use and said proposed use shall be subject to all of the requirements of said use class subcategory, if so approved by the Zoning Hearing Board.").

43. Indeed, the Township's Zoning Officer has already determined that the Data Center is a "high technologies industry" use. *See* Exhibit B.

44. Further, the Township has had the Draft Data Center Amendment posted on its website for more than a year, in which it expressly stated that the "Township's zoning officer issued a written zoning determination that a data center was a by-right use in the Planned Industrial Park Use Class 8A." *See* Exhibit C.

45. In the case of unlisted uses, Section 350-40.C(1)(c) of the Zoning Ordinance provides that the Board may permit such use similar use based on the four the use criteria provided for therein:

(1) Here, the Data Center is similar to and compatible with other industrial uses permitted in the I-2 and I-3 Zoning Districts. *See* Zoning Ordinance § 350-40.C(1)(c)(1).

(2) Because of the existing landscape, proposed buffering and noise mitigation measures, the Data Center "will not adversely affect or create nuisances for adjoining residential areas." *See* Zoning Ordinance § 350-40.C(1)(c)(2).

(3) The Data Center will not "generate traffic loads, congestion or excessive parking requirements in the district which would be detrimental to other uses in the district." After initial construction, the Data Center will generate far less traffic than the warehouse distribution centers that are already approved for the site. *See* Zoning Ordinance § 350-40.C(1)(c)(3).

(4) The Data Center will not "detract from or substantially differ from or exhibit any influences, emissions or glare which are detrimental to the

> health, safety, welfare or morals of other persons residing in or undertaking uses or other activities in the area." The Data Center will comply with all applicable local, state and federal environmental laws and regulations. RPL East will implement all required environmental controls and comply with all applicable performance standards. Again, the Data Center is a more passive use than the distribution warehouses that are already permitted on the Subject Property or the heavy industrial uses that are permitted. *See* Zoning Ordinance § 350-40.C(1)(c)(4).

46. Accordingly, if the Board determines that the Zoning Ordinance is not unlawfully exclusionary with respect to data center uses, RPL East alternatively requests that the Board determine that the Data Center is a "high technology industry" use or other "general industrial" use that is permitted by right on the Subject Property.

## VI. CONCLUSION

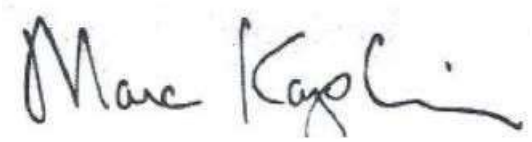
47. RPL East has demonstrated that the Zoning Ordinance is substantively invalid because it does not provide for data center uses. If the Board agrees, then RPL East is entitled to site specific relief to develop the Data Center where proposed and as shown on the accompanying plans. Therefore, RPL East respectfully requests that the Board approve its Validity Challenge.

48. If the Zoning Ordinance is not exclusionary with respect to data center uses, then the only appropriate use classification would be a "high technology industry" use or other "general industrial" use that are permitted by right on the Subject Property. Therefore, in the alternative to its Validity Challenge, RPL East requests a determination that the proposed Data Center is a "high technology industry" uses or other "general industrial" use that is permitted by right on the Subject Property.[1]

[1] 1 RPL East recognizes that, in either event, it will be required to apply for and receive land development plan approval from the Township prior to commencing construction of the Data Center.

Respectfully submitted,

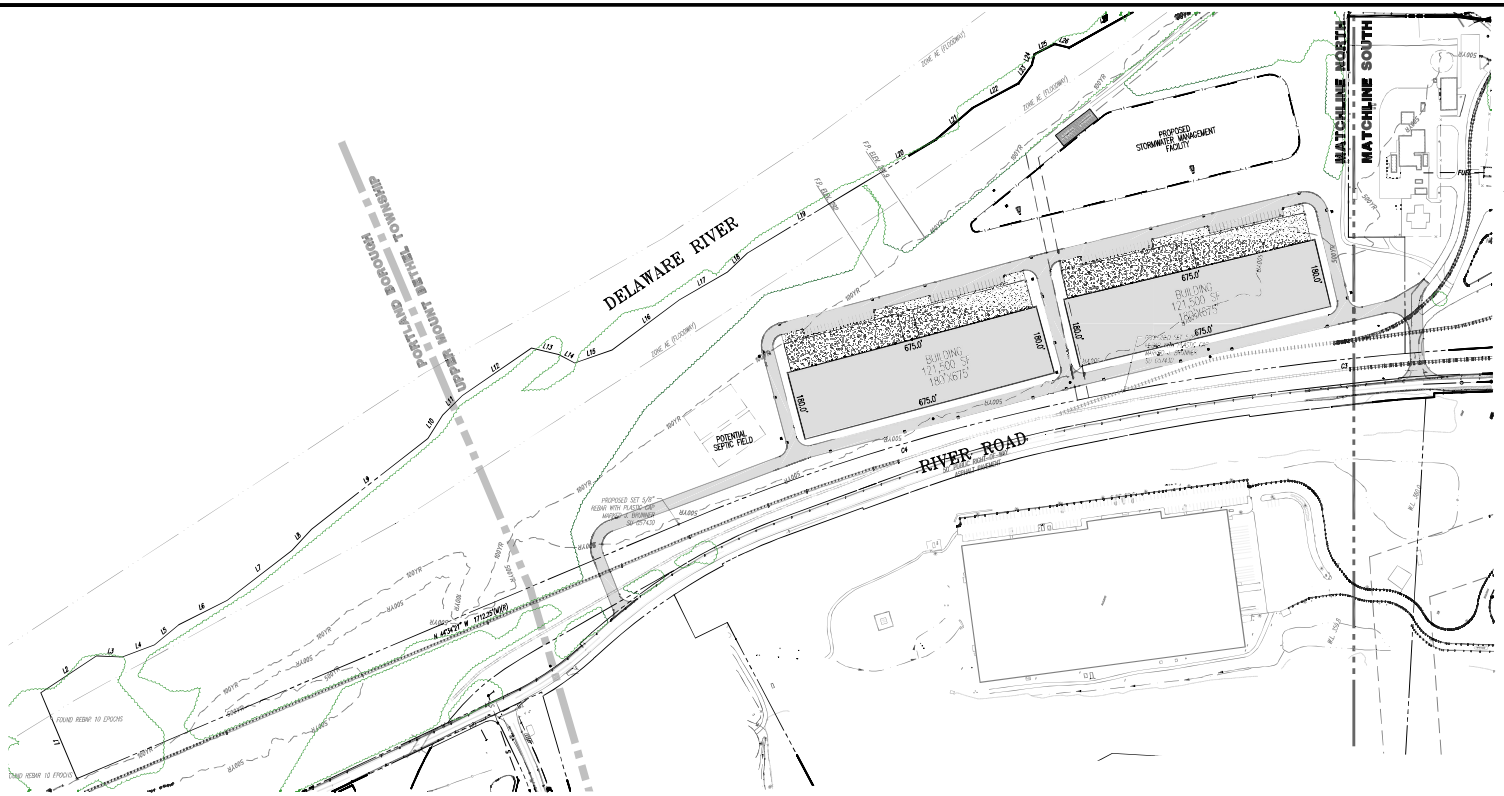
**Kaplin Stewert Meloff Reiter & Stein, P.C.**

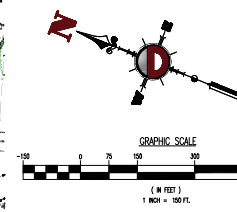
By: 

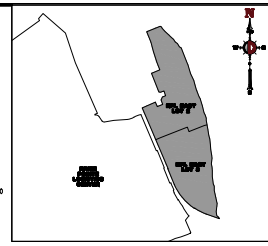
Marc B. Kaplin, Esq.
Union Meeting Corporate Center
910 Harvest Drive, P.O. Box 3037
Blue Bell, PA 19422-0765
(610) 260-6000
mkaplin@kaplaw.com

**Dated**: October 8, 2026

# Exhibit A




SITE KEY

NOT TO SCALE

## GENERAL NOTES:

1. THIS PLAN HAS BEEN PREPARED BASED ON REFERENCES INCLUDING:
   MAJOR SUBDIVISION PLAN
   CHESTER POINT ASSOCIATES, INC.
   10 MACKENZIE DRIVE, SUITE 110
   BANGOR, PENNSYLVANIA 18013
   SURVEYOR FILE NO: 01-190439-00
2. OWNER: BANGOR AREA COMMERCIAL & INDUSTRIAL DEVELOPMENT AUTHORITY
   107 BLUE VALLEY DRIVE
   BANGOR, PENNSYLVANIA 18013
   PARCEL DATA: PARCEL NO. 212-5-6-0131
   2027 RIVER ROAD
   TOWNSHIP OF UPPER MOUNT BETHEL
   NORTHAMPTON COUNTY, PENNSYLVANIA
3. ZONE: ZONE I-3 (HEAVY INDUSTRIAL ZONE)
4. EXISTING USE: VACANT/FORMER POWER PLANT
5. PROPOSED USE: DATA CENTER DEVELOPMENT AND POWER PLANT
6. SCHEDULE OF ZONING REQUIREMENTS PER UPPER MOUNT BETHEL ZONING ORDINANCE AS AMENDED THROUGH SEPTEMBER 9, 2020 (§4.203 CLASS 115 HEAVY INDUSTRIAL USES AND ORDINANCE 2020-02 PLANNED INDUSTRIAL PARKS)

| ZONE REQUIREMENT | ZONE I-3 | EXISTING | PROPOSED |
|---|---|---|---|
| MINIMUM LOT AREA (LOT/TRACT) | 2 Ac/50 Ac | 6,616,751 SF (151.904 Ac) | NO CHANGE |
| MINIMUM LOT WIDTH | 150 FT | >150 FT | NO CHANGE |
| MINIMUM FRONT YARD SETBACK (RIVER ROAD) | | | |
| -BUILDING | 45 FT | 146.7 FT | 182.7 FT |
| -PARKING | 10 FT | 338.4 FT | 257.1 FT |
| MINIMUM REAR YARD SETBACK | | | |
| -BUILDING | 10 FT | 101.0 FT | 148.4 FT |
| -PARKING | 10 FT | 282.1 FT | 282.8 FT |
| MINIMUM SIDE YARD SETBACK | | | |
| -BUILDING | 10 FT | 30.0 FT | 102.3 FT |
| -PARKING | 10 FT | 121.5 FT | 111.5 FT |
| MAXIMUM BUILDING HEIGHT | 100 FT | 117 FT | 80 FT |
| MAXIMUM BUILDING AREA | 800,000 SF | < 800,000 SF | 121,500 SF |
| TOTAL BUILDING AREA | | 80,600 SF | 729,000 SF |
| MAXIMUM BUILDING COVERAGE | 40% | 1.2% | 11.0% |
| TOTAL IMPERVIOUS AREA | | 525,497 SF | 2,937,251 SF |
| MAXIMUM IMPERVIOUS COVERAGE | 60% | 7.9% | 44.4% |

7. PARKING REQUIREMENTS (§4.502)
   A. EACH SURFACE PARKING SPACE SHALL CONSIST OF A RECTANGULAR AREA HAVING DIMENSIONS NOT LESS THAN NINE FEET, SIX INCHES IN WIDTH AND 19 FEET IN LENGTH, AISLES SERVING SUCH SURFACE PARKING AREAS SHALL HAVE A MINIMUM WIDTH OF 24 FEET.
   B. EVERY PLANNED INDUSTRIAL PARK SHALL PROVIDE ADEQUATE PARKING FACILITIES, INCLUDING BUT NOT LIMITED TO ACCESSWAYS, DRIVEWAYS, DRIVE AISLES, COLLECTOR DRIVES, LOADING AREAS, PARKING SPACES, AND PROVISIONS AS NEEDED, TO ENSURE THE EFFICIENT CIRCULATION OF VEHICLES AND PEDESTRIANS IN CONFORMANCE WITH THE REQUIREMENTS OF SECTION 7.02. THE MINIMUM PARKING SPACES SHALL BE THE GREATER OF 1 PARKING SPACE FOR THREE EMPLOYEES OR 1 PARKING SPACE FOR EVERY 5,000 SQUARE FEET OF INTERIOR BUILDING FLOOR AREA. (§2020-02.09)
   C. PARKING CALCULATION:

      REQUIRED = (6 BUILDINGS X 121,500 SF)/(1 PARKING SPACES/5,000 SF) = 146 SPACES REQUIRED

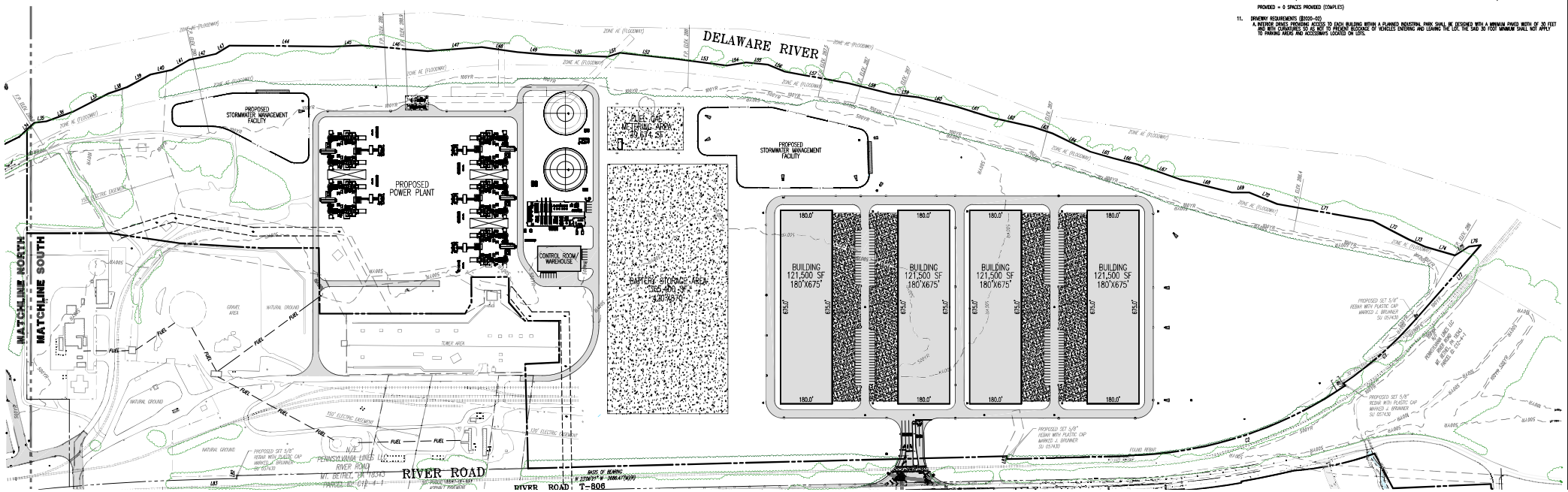
      PROVIDED = (6 BUILDINGS X 40 SPACES/BLDG) = 240 SPACES PROVIDED (COMPLIES)

10. LOADING REQUIREMENTS (§4.503)
    A. EVERY COMMERCIAL, INDUSTRIAL, RESORT OR OTHER BUILDING WHICH REQUIRES THE RECEIPT OR DISTRIBUTION BY VEHICLES OR MATERIALS OR MERCHANDISE SHALL PROVIDE ONE OFF-STREET LOADING SPACE FOR EACH 10,000 SQUARE FEET OF GROSS BUILDING GROUND AREA OR PART THEREOF, AND EACH SUCH SPACE SHALL BE AT LEAST 400 SQUARE FEET IN AREA.
    B. LOADING CALCULATION:

       REQUIRED = NONE (BUILDINGS DO NOT REQUIRE THE RECEIPT OR DISTRIBUTION BY VEHICLES OR MATERIALS OR MERCHANDISE)

       PROVIDED = 0 SPACES PROVIDED (COMPLIES)

11. DRIVEWAY REQUIREMENTS (§2020-02)
    A. INTERIOR DRIVES PROVIDING ACCESS TO EACH BUILDING WITHIN A PLANNED INDUSTRIAL PARK SHALL BE DESIGNED WITH A MINIMUM PAVED WIDTH OF 30 FEET AND WITH CURVATURES SO AS NOT TO PREVENT BLOCKAGE OF VEHICLES ENTERING AND LEAVING THE LOT. THE SAID 30 FOOT MINIMUM SHALL NOT APPLY TO PARKING AREAS AND ACCESSWAYS LOCATED ON LOTS.



# Exhibit B

Keller Zoning and Inspection Services

UCC/Zoning
Code Enforcement

115 S. Broad St.
Nazareth, PA 18064
Phone: 610-759-8227
Fax: 610-365-2954

April 29, 2024

Marc B. Kaplin, Esquire
Kaplin, Stewart, Meloff, Reiter & Stein, P.C.
910 Harvest Dr.
P.O. Box 3037
Blue Bell, PA 19422

Subject: Zoning Determination Letter – River Point Logistics Center

Dear Mr. Kaplin:

We have reviewed your Zoning Determination Request Letter dated April 25, 2024 regarding the use of numerous parcels, owned by River Point Logistics Center LLC, totaling approximately 800 acres bounded by Marshfield Drive, River Road, Pine Tree Lane and Potomac Street in Upper Mount Bethel Township.

River Point Logistics "desires to establish upon the property a Data Center for housing, management, processing, and/or transmission of digital data and the storage of computer and/or network equipment, systems, servers, appliances and other associated components related to digital data operations for off-site users." "The proposed use will utilize on-site exterior machines to sustain and/or provide energy for thew operations of the Data Center. Typical supporting equipment will include back-up batteries and power generators, cooling units, fire suppression systems and enhanced security features."

We have made the following determination(s):

1. The parcels are located in the I-2 General Industrial Zoning District and the I-3 Heavy Industrial Zoning District.

2. The parcels are subject to the provisions of Section 350-15.I Use Class 8A, New Industrial Parks.

3. Section 35-15.I allows permitted by right Use Class 8 Industrial Uses in Use Class 8A New Industrial Park in the I-2 and I-3 Zoning Districts as permitted by right uses.

4. Section 350-15.H(3)(c) allows the following use(s) permitted by right "Research facilities, laboratories, high tech industries, medical research and pharmaceutical industries, research centers, educational institutions and technical centers to support these activities which do not jeopardize the health and welfare of employees and the Township as a whole." **The Zoning Officer has determined the proposed Data Center is permitted by right.**

5. Section 350-15.J Use Class 9, Customary Accessory Uses permits by right uses customarily accessory to the principal use of the lot. "Uses which are customarily subordinate and appropriate to the principal use of a lot or a building located on the same lot, as determined by the Zoning Officer." **The Zoning Officer has determined that the proposed supporting equipment and systems are Customary Accessory Uses permitted by right.**

The above determination(s) are for the proposed use(s) only. A formal Zoning Application will need to be filed at some point for a complete zoning review.

Sincerely,

Bettina Serfass
UMBT Zoning Officer

Cc. Justin Coyle, UMBT Engineer
Ronald Karasak, UMBT Solicitor
UMBT File

# Exhibit C

**UPPER MOUNT BETHEL TOWNSHIP**
**NORTHAMPTON COUNTY, PENNSYLVANIA**
**ORDINANCE NO. 2025-___**

AN ORDINANCE AMENDING THE TOWNSHIP'S ZONING ORDINANCE BY ADDING NEW PERMITTED/BY-RIGHT USE CLASS 8A-DATA CENTERS AND DATA CENTER CAMPUSES, DEFINITIONS, AND SUPPLEMENTARY REGULATIONS TO THE TOWNSHIP ZONING ORDINANCE IN ORDER TO FURTHER IMPLEMENT THE INTENT OF GENERAL INDUSTRIAL USES OF THE EXISTING TOWNSHIP ZONING ORDINANCE

**WHEREAS,** Upper Mount Bethel Township is a political subdivision situate within the County of Northampton, Commonwealth of Pennsylvania, is a Township of the Second Class and has offices located at 387 Ye Olde Highway, Mt. Bethel, PA 18343; and,

**WHEREAS**, the Township has in effect a Zoning Ordinance (hereinafter "Ordinance") which was revised and completely restated and readopted on March 15, 2004 and has since been amended; and,

**WHEREAS** and by Township Ordinance No. 2020-02, the Zoning Ordinance was amended to allow for the development of new Industrial Parks attractively developed and designed to attract new industry. See Ordinance Section Use Class 8-General Industrial Uses-subsection 8(e); and,

**WHEREAS**, the Township's zoning officer issued a written zoning determination that a data center was a by-right use in the Planned Industrial Park Use Class 8A; and,

**WHEREAS**, the Township believes that codifying that written determination by adding and defining data centers and data center campuses, and adding supplementary regulations for those uses is in the Township's best interests as it promotes the health, safety and welfare of the Township's residents; and,

**WHEREAS,** the PA Second Class Township Code (hereinafter referred to as "Code") provides that the Board may adopt ordinances in which general or specific powers of the Township may be exercised and can include the protection of the health, safety and welfare of the Township residents (53 P.S. Section 66506); and,

**WHEREAS,** the Code also authorizes the Township to adopt land use regulations, 53 P.S. Section 66516; and,

**WHEREAS** and pursuant to Section 609 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10609, the Township is authorized and empowered to enact amendments to the Upper Mount Bethel Township Zoning Ordinance after public hearing thereon pursuant to public notice; and,

**WHEREAS** and pursuant to the Pennsylvania Municipalities Planning Code, both the Township Planning Commission and the Lehigh Valley Planning Commission have reviewed the proposed amendments; and,

**WHEREAS**, the Upper Mount Bethel Township Board of Supervisors has conducted a public hearing pursuant to public notice concerning the aforesaid amendments to the Upper Mount Bethel Township Zoning Ordinance; and

**WHEREAS**, after holding a public hearing, the Upper Mount Bethel Township Board of Supervisors desires to ordain, adopt and enact the amendments to the Upper Mount Bethel Township Zoning Ordinance; and

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED, and it is hereby ENACTED AND ORDAINED** by the Board of Supervisors of Upper Mount Bethel Township, Northampton County, Pennsylvania, as follows:

**Section 1**. **ARTICLE 2-DEFINITIONS, SECTION 2.100, APPLICABLE DEFINITIONS** is amended by adding the following definitions:

**2.161a** **Data Center** – a building which is occupied primarily by computers and/or telecommunications and related equipment, including supporting equipment, where information is processed, transferred and/or stored. A data center may include data center equipment.

**2.161b** **Data Center Accessory Uses/Structures** – ancillary uses or structures associated with data centers including but not limited to: utilities; utility lines; administrative, logistical, fiber optic, storage, and security buildings or structures; electrical substations; domestic and non-contact cooling water and waste-water treatment facilities; water holding facilities; pump stations; water towers; environmental controls (air conditioning or cooling towers, fire suppression, and related equipment); redundant data communications connections; and security features, provided such data center accessory uses/structures are located on the same tract or assemblage of adjacent parcels developed as a unified development for a data center campus.

**2.161c** **Data Center Campus** – An integrated development of multiple data centers that may include data center accessory uses/structures and data center equipment.

**2.161d** **Data Center Equipment** – outdoor mechanical equipment adjacent to a data center that provides redundant power capacity to a data center.

**2.161e** **Data Center Campus Master Plan** – A plan for land development for a data center campus as set forth in Section 6.1300.

**Section 2. ARTICLE 4 – BASIC DISTRICT REGULATION, 4.200 USE CLASSES IN ZONING DISTRICTS, USE CLASS 8.A, PLANNED INDUSTRIAL PARKS, SECTION 1.A. USES BY RIGHT IN I-2 DISTRICT** is amended as follows by adding:

(15) Data Center.

(16) Data Center Campus.

**Section 3. ARTICLE 6 SUPPLEMENTARY REGULATIONS** is amended by adding **Section 6.1300 DATA CAMPUS DEVELOPMENT** as follows:

**6.1300 Data Center Development.** Data center and/or data center campus development shall be permitted in Use Class 8.A. as a by right use subject to the requirements applicable to planned industrial park except to the extent modified by this Amendment. In the event of a conflict between Section 6.1300-6.1311 and the Zoning Ordinance or the SALDO, this Section 6.1300-6.1311 shall control.

**6.1301 Accessory Uses/Structures.** Data center equipment shall be permitted by right in support of a data center or data center campus. Data center accessory uses/structures shall be permitted by right in support of a data center campus. For purposes of the minimum distance between buildings, data center equipment and un-occupied data center accessory structures shall be deemed as auxiliary buildings that are not subject to the 25-foot set back between buildings.

**6.1302 Sound.** Sound from a data center or a data center campus shall not exceed: (i) 55 dB(A) during day time hours (6:00 a.m. to 6:00 p.m.) and 45 dB(A) during night time hours (6:00 p.m. to 6:00 a.m.) at a receiving residential land use; (ii) 65 dB(A) during day time hours (6:00 a.m. to 6:00 p.m.) and 55 dB(A) during night time hours (6:00 p.m. to 6:00 a.m.) at a receiving parks land use; and (iii) 65 dB(A) during day time hours (6:00 a.m. to 6:00 p.m.) and 60 dB(A) during night time hours (6:00 p.m. to 6:00 a.m.) at any other land use. Sound shall be measured 1.5 meters above ground at the property line per ANSI S1.13-2020 (American National Standard – Measurement of Sound Pressure Levels in Air). The developer will provide a sound assessment with its preliminary land development plan application for a data center or preliminary master plan application for a data center campus establishing how it will comply with the above sound standards. The sound assessment will be performed by a professional acoustic engineer that can demonstrate qualifications by delivery of a resume to the Zoning Officer. Notwithstanding the foregoing provisions of this Section, all sound produced by: (i) required periodic testing of data center equipment, and (ii) emergency use of data center equipment are exempt from the requirements of this Section and the Zoning Ordinance.

**6.1303 Parking.** A minimum of 40 spaces per each data center shall be provided; provided that, the minimum parking for a data center campus may be reached by aggregating all parking on a data center campus site. No parking for a data center shall be located within fifty (50) feet of a property line abutting a residential district or having a residential use.

**6.1304 Off Street Loading**. A minimum of 1 off-street loading space/dock shall be provided for a data center.

**6.1305 Utility Lines**. To the extent practical, utility lines, including but not limited to electronic, fiber optic, cable, and telephone lines, from sub-station(s) to a data center shall be placed under-ground. This requirement shall not apply if the utility company requires above-ground lines or the placement of under-ground lines is not feasible. Utility lines to the substations from off-site may be placed above-ground.

**6.1306 Height.** Data centers shall comply with the height restrictions for planned industrial parks, including the setback requirements for height around Community Park except that any data center that exceeds 90 feet in height shall be approved by the Board of Supervisors through modification under the master plan process set forth in Section 6.1311. No data center shall exceed 110 feet. Data Center Accessory Uses/Structures shall not exceed 90 feet. For purposes of determining the height of a data center or a building associated with data center accessory uses, projections through the roof of the building for items such as elevator towers, heating or cool units, parapet walls to screen rooftop equipment and protrusions, and other such items shall not be counted.

**6.1307 Fences.** Section 6.305 shall not apply to a data center or data center campus development. Fencing height shall be adequate to provide for secured facilities. Fences for a data center or data center campus shall be setback a minimum of 10 feet from the property line.

**6.1308 Outdoor Lighting.** Section 6.909 shall apply to a data center or data center campus development except that Section 6.909.b.4 shall be modified to permit lighting fixtures (luminaries) not higher than 30 feet. Lighting fixtures that are 25 feet or less in height shall not be located closer than 30 feet from any boundaries of residential or institutional areas. Lighting fixtures that are in excess of 25 feet and 30 feet or less in height shall not be located closer than 60 feet from any boundaries of residential or institutional areas. Outdoor lighting shall not exceed 30 feet unless a variance is obtained.

**6.1309 Construction Hours.** Construction and related operation of heavy machinery, operating or permitting the operation of any tools, equipment or heavy machinery used in construction, drilling, or demolition work for a data center campus may occur between the hours of 7:00 a.m. and 10:00 p.m. on Monday through Saturday. The zoning officer may permit additional construction hours by administrative modification upon request by an applicant.

**6.1310 Phased Development.** A data center campus may be developed in one or more phases. No time limitation shall apply to approvals of a data center campus.

**6.1311 Data Center Campus Master Plan.** Data center campus development shall be subject to a data center campus master plan which covers the full site. A data campus center master plan application shall be submitted for purposes of developing a data center campus. An applicant shall submit separate data center campus master plan applications for preliminary and final approvals by the Board of Supervisors. The process and procedures for data center campus master plan application shall follow the process for major/subdivisions/land development approvals under the SALDO subject to the exceptions for planned industrial parks and as set forth below. In the event of a conflict between these terms and the SALDO, Section 6.1311 and the exceptions for planned industrial parks shall control.

**6.1311.A.** A data center campus master plan shall be subject to the same exceptions from the SALDO as a planned industrial park. In addition, the following provisions of the SALDO shall not apply:

1. Section 301 (Tentative Sketch Plan).

2. Section 307.12 (recordation). The final data center campus master plan approval shall not be recorded. Each final phase site plan of the data center campus master plan shall be recorded. The Township may require as a condition of approval that applicant cause to be recorded a final "as built" data center campus master plan.

3. Section 600.4.5.1 (sidewalks)

4. Section 600.4.10. Provided that, the applicant shall demonstrate to the Township engineer that fuel tanks are sufficiently secured to prevent movement by wind, water or other elements and shall meet the requirements of the National Electrical Code.

**6.1311.B** After approval of the data center campus master plan, the development of each, lot, parcel or building identified in the data center campus master plan shall be permitted by right. An individual site plan for each data center identified on the data center campus Master Plan or each phase of the development of the data center campus demonstrating compliance with the data center campus master plan shall be submitted to the zoning officer prior to issuance of a building permit. A site plan may reflect lot consolidation and subdivision of lots that at the time of submission are under common control and separate lot consolidation, and subdivision is not necessary. Copies of any applicable third-party permits shall be submitted to the zoning officer prior to issuance of a building permit. Applicable third-party permits may include, but are not limited to, highway occupancy permits, NPDES permits, and ESCGP permits.

**6.1311.C** An individual site plan for each data center or each phase of the development of the data center campus shall be found to be consistent with the approved data center campus master plan if it is clearly identified in the approved data center campus master plan or if the site plan is found to be a minor modification to the approved data center campus master plan. The procedure for a major modification to the approved data center campus master plan shall be the same as a new master plan under this Chapter.

1. A minor modification to an approved data center campus master plan is development that results in any of the following:

   a. A rate of stormwater discharge and runoff from the site equal to or less than rates identified in the stormwater management plan approved in connection with the data center campus master plan.

   b. Minor shifts in building locations that do not substantially deviate from the originally approved plans.

   c. Addition or relocation of data center accessory uses/ structures or data center equipment within the approved development area.

   d. Adjustments to internal road layouts that do not substantial modify overall traffic patterns or materially alter ingress and egress access points.

e. Adjustments to utility line routes within the approved development area.

f. Building adjustments that increase the square footage of a data center or accessory uses/structures by up to 5% or any adjustment that decreases or eliminates the square footage of a planned data center or data center campus.

g. Any adjustment to the approved plan required by a third-party governmental agency including but not limited to PennDOT or DEP necessary for approval under their permitting process.

h. Any similar adjustments deemed by the zoning officer to be minor in nature consistent with the Zoning Ordinance and this Section 6.1300-6.1311.

2. A major modification to an approved data center campus master plan is any modification to an approved data center campus except as set forth in Section 6.1311.C.1 above.

3. The applicant may submit to the zoning officer (either with the site plan or at the request of the zoning officer) any additional plans, studies, or reports demonstrating that individual site plan for each data center or each phase of the development of the data center campus is a minor modification of the data center campus master plan.

**6.1311.D** The Board of Supervisors may approve waivers or modifications for implementation of the data center campus master plan if a provision is shown to the Board's satisfaction to be unreasonable, cause undue hardship, or an alternative standard is demonstrated to provide equal or better outcomes.