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By: Lewin Weyl,
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JAYLIN HOLDINGS, LLC	:	
	:	
Petitioner,	:	
	:	
v.	:	AGENCY REF. NO.:
	:	150040001.2(CAF090001)
	:	
NEW JERSEY DEPARTMENT	:	
OF ENVIRONMENTAL	:	
PROTECTION, DIVISION OF	:	STIPULATION OF SETTLEMENT
LAND USE REGULATION	:	
	:	
Respondent.	:	
	:	
	:	

WHEREAS, on November 8, 2004, Jaylin Holdings, LLC ("Petitioner") filed an application for an individual Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. ("CAFRA") Permit (File No. 1500-04-0001.1) with the Department of Environmental Protection ("Department") to construct a 208,433 square foot Wal-Mart retail store with a 19,554 square foot garden center and 1,198 parking spaces ; and

WHEREAS, the Petitioner is deemed to mean the petitioner Jaylin Holdings, LLC, and all of its representatives, agents, consultants, successors and assigns; and

WHEREAS, Petitioner also filed an application for a freshwater wetlands permit pursuant to N.J.A.C. 7:7A-1.1 et seq.; and

WHEREAS, the land area proposed for the proposed Walmart retail store and associated accessory uses is known as Block 505, Lots 14 & 15 in Toms River and Block 44, Lots 2, 3, 4 (part) and 5 located in Manchester, Ocean County (the "Development Area"); and

WHEREAS, the southern portion of Lot 4 will be incorporated into the Project through subdivision, whereas the northern portion of Lot 4 is excluded and a 0.342 acre portion of Lot 15 is proposed for dedication to NJDOT for roadway improvements, and

WHEREAS, on or about June 1, 2006, the Department's Division of Land Use Regulation denied Petitioner's initial application (the "2006 denial"); and

WHEREAS, Petitioner filed a timely administrative hearing request; and

WHEREAS, Petitioner and the Department engaged in mediation efforts through the Department's alternative dispute resolution ("ADR") program; and

WHEREAS, as a result of those efforts, in September 2009, Petitioner reduced the scale of proposed development and filed a revised application to construct a 187,793 square foot retail store, a 5,703 square foot seasonal garden center, parking for 833 vehicles, retaining walls, 5 above ground and 2 underground stormwater basins, and access roads off Route 37 and Northampton Boulevard (the "2009 revised submission"); and

WHEREAS, the Petitioner also revised its proposed development to avoid an existing pine snake hibernaculum located within the initial proposed development area approximately 300 feet of Highway Route 37 and included a linear barrier wall separating the proposed development from the hibernaculum; and

WHEREAS, the Petitioner proposed to acquire 21 acres of contiguous pine snake habitat to the Property (Block 75.01, Lot 3 in Manchester Township) from Manchester Township which is pine snake habitat; and

WHEREAS, Petitioner proposed to acquire an additional 89.29 acres of land (Block 77, Lots 2, 4, 5 & 6) for preservation of pine snake habitat; and

WHEREAS, pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. ("FWPA") the revised application also requested a Freshwater Wetlands General Permit No. 6 ("GP6") to fill an isolated wetland in the Development Area; and

WHEREAS, on March 15, 2010, the Department issued a denial of the Petitioner's application for a CAFRA individual permit, File No. 1500-04-0001.2 (CAF090001), for the revised application; and

WHEREAS, in March 2010, the Department did not deny the Freshwater Wetlands General Permit No. 6 application that would affect approximately .47 acre of isolated freshwater wetlands, which application is still pending; and

WHEREAS, in March 2010 the Department determined that Petitioner did not comply with the following coastal zone management regulations: N.J.A.C. 7:7E-3.38 (Endangered or Threatened Wildlife or Plant Species Habitat); N.J.A.C. 7:7E-5B.4 (Impervious Coverage Limits for a Site in the CAFRA Area); N.J.A.C. 7:7E-5B.5 (Vegetative cover percentages for a site in the CAFRA area); N.J.A.C. 7:7E-5B.6 (Mainland coastal centers); N.J.A.C. 7:7E-6.2 (Basic Location Rule); N.J.A.C. 7:7E-8.4 (Water Quality); N.J.A.C. 7:7E-8.6 (Groundwater Use); and

WHEREAS, on March 24, 2010, the permit decision was published in the DEP Bulletin; and

WHEREAS, pursuant to N.J.A.C. 7:7-5.1 any person aggrieved by a permit decision may request an adjudicatory hearing within thirty (30) days of publication in the DEP Bulletin; and

WHEREAS, on April 23, 2010, Petitioner submitted a timely request for an adjudicatory hearing and in response to the March

15, 2010 denial of the CAFRA Permit application to the Department, appealing the permit decision; and

WHEREAS, the Petitioner and the Department again engaged in settlement discussions; and

WHEREAS, after the Department's March 2010 denial, the applicant amended the site plan for the project and increased the proposed size of the retail store by 2,004 square feet to a total of 189,797 square feet as a result of the need to accommodate a water tower on the building, which change did not result in any other changes to the site plan; and

WHEREAS, Petitioner now seeks to construct a 189,797 square foot Walmart retail store with a 5,703 square foot seasonal garden center, parking for 833 vehicles, retaining walls, 5 above ground and 2 underground stormwater basins, and access roads off Route 37 and Northampton Boulevard (the "Project") within an approximate 22.4 acre Development Area; and

WHEREAS, Petitioner has submitted to the Department a "willingness to serve letter" from United Water Toms River resolving groundwater use issues; and

WHEREAS, Petitioner submitted to the Department the Toms River MUA approval dated November 24, 2009; and

WHEREAS, via letter dated April 1, 2010 the Ocean County Utilities Authority has confirmed its extension of sewer service approval which runs until June 30, 2013; and

WHEREAS, the Petitioner has submitted an amended "Endangered or Threatened Wildlife Habitat Impact Assessment", prepared by EcolSciences, Inc. revised November 29, 2010, an "Analysis of Conceptual Habitat Evaluation Method for Northern Pine Snakes", prepared by EcolSciences, Inc. dated November 29, 2010, and also a "CAFRA Addendum to Previously Submitted Statement of Compliance", prepared by EcolSciences, Inc., dated November 29, 2010; and

WHEREAS, the amended application now also includes "Habitat Enhancement Plans, prepared by Bohler Engineering, dated November 29, 2010, for mitigation lands, a "Pine Snake Habitat Enhancement Concept," prepared by Bohler Engineering, dated June 3, 2010; a Wetlands Mitigation Plan, prepared by Bohler Engineering, dated June 26, 2009 and revised through November 2, 2011 and an accompanying November 2, 2011 Vernal Habitat Mitigation Proposal Report; and

WHEREAS, the Department's Endangered Species Non-game Program ("ENSP") has also prepared a Conceptual Habitat Evaluation Method for Northern Pine Snakes and an Environmental Review of the Revised Plans (as defined in paragraph 1), prepared by David Golden, dated August 31, 2011 and supplemented by an addendum prepared by the ENSP, dated December 2011; and

WHEREAS, the Petitioner has agreed to undertake additional steps to meet the Department's rules for issuance of a joint

CAFRA and freshwater wetlands permit, including, but not limited to, the acquisition of additional land and the preservation of said land which constitutes pine snake habitat; and

WHEREAS, Petitioner has also agreed to enhance the habitat and potential habitat on these lands; and

WHEREAS, the Department has determined that certain lands adjacent to Petitioner's proposed Development Area, certain lands adjoining portions of the adjoining Heritage Minerals tract and certain lands which adjoin the Whiting Wildlife Management Area and the Manchester Wildlife Management Area serve as pine snake habitat land areas; and

WHEREAS, the Department has prepared a conceptual Habitat Evaluation Method (HEM) for northern pine snakes that estimates the habitat value of a given property through assessments conducted at both the desktop (using computer-based GIS applications) and in the field; and

WHEREAS, the Department's ENSP has determined that upon preservation and enhancement of the Protected Lands as set forth in the Environmental Review prepared by Golden, the pine snake habitat adjacent to and in the vicinity of the Project in northern Ocean County shall be improved; and

WHEREAS, the Department determined that the proposed revised application with added acquisition and habitat enhancement as per the applicant's submissions and the ENSP

Environmental Review now meets the applicable coastal zone management regulations; and

WHEREAS, the Department has reviewed the Revised Plans and is completing its review of the public comments of the Petitioner's Revised Plans and whether these meet the regulatory standards governing N.J.A.C. 7:7A-1.1 et seq., N.J.A.C. 7:7E-3.38, N.J.A.C. 7:7E-5B.4, N.J.A.C. 7:7E-5B.5, N.J.A.C. 7:7E-5B.6 and N.J.A.C. 7:7E-6.2; and

WHEREAS, the Petitioner has initiated the process needed to remove waste, pollutants and contaminants from the lands identified in paragraphs 2a, 2b, 2c and 2d of the Agreement, as may be needed via the retention of Whitestone Associates Inc. which prepared an initial Work Plan dated June 2011; and

WHEREAS, prior to the start of the installation of the linear barrier wall depicted on the Development/Conservation Area Plan revised through October 6, 2011 and referenced in paragraph 1 of this Agreement and further prior to the start of any site disturbance, pre-construction earth movement or construction of or for the Project, Petitioner shall remove and/or provide an adequate financial assurance of the waste removal pursuant to N.J.A.C. 7:26C-5.2(f)1, 2, 3 or 4; and

WHEREAS, Petitioner shall meet the applicable Remediation Standards pursuant to N.J.A.C. 7:26D-1 et seq., including the Residential Cleanup Standards for removal of waste, contaminants

and pollutants throughout the Protected Lands described in paragraphs 2a-2c below prior to DEP's proposed acquisition; and

WHEREAS, on or about January 13, 2011, the Department issued Notice of Intent to Settle in the DEP Bulletin and Petitioner mailed notices to all persons and groups who had previously commented on the pending applications which are now appeals; and

WHEREAS, the Department made available the Revised Plans prepared to that date; and

WHEREAS, Petitioner provided notice by certified mail to each person provided notice of the application for the permit or approval for the Project which is the subject of this appeal and to each person/party that commented on the application/Project and to the municipal clerks of the Township of Toms River and Manchester; and

WHEREAS, in response to the proposed Notice of Intent to Settle which afforded persons the opportunity to comment, interested persons asked for more time to comment and the Department extended the time period to comment; and

WHEREAS, the Department accepted comments from the date of publication in the DEP Bulletin pursuant to N.J.A.C. 7:7-5.4, and extended the time to comment through March 10, 2011; and

WHEREAS, the public has had an opportunity to review and to comment upon the reports and plans; and

WHEREAS, the Department has received and is reviewing the comments and is addressing commenters' concerns in its Summary Analysis; and

WHEREAS, on or about April 25 and 27, 2011 and pursuant to N.J.S.A. 13:19-45, the Department sent notices of intent to settle to the Township of Toms River and to the Township of Manchester inquiring if the either of the municipalities wish to participate in settlement discussions; and

WHEREAS, both the Township of Toms River and the Township of Manchester have submitted letters to the Department in support of the Project and have indicated that the Project has been approved by the respective municipal planning boards; and

WHEREAS, the parties have determined to amicably resolve the pending appeals pursuant to this Stipulation of Settlement Agreement ("Agreement").

NOW, THEREFORE, the Petitioner and Department agree to settle the within matter as follows:

1. Issuance of Permits. Subject to the Department's completion of its review of comments and its determination that Petitioner has submitted accurate information and that Petitioner's proposed Revised Plans defined herein meet the applicable coastal zone management and freshwater wetlands regulations and assuming that the Department does not consider any public comments to provide good cause to deny the requested

permits, the Department anticipates issuance of the requisite permits based on the Petitioner's 2009 revised submission and supplemental documentation and its Revised Plans prepared by Bohler Engineering, dated and revised as noted, entitled "PRELIMINARY AND FINAL SITE PLAN & MINOR SUBDIVISION FOR WAL-MART REAL ESTATE BUSINESS TRUST, PROPOSED WAL-MART STORE (#1844-05), NEW JERSEY STATE HIGHWAY ROUTE #37 & NORTHAMPTON BOULEVARD, BLOCK 44, LOTS 2, 3, 5 AND PART OF LOT 4, MANCHESTER TOWNSHIP, TAX MAP SHEETS 7.02, 8 & 9 (DATED APRIL, 1973); BLOCK 505, LOTS 14 & 15, TOMS RIVER TOWNSHIP, TAX MAP SHEET 54 (DATED SEPTEMBER, 1996) OCEAN COUNTY, NEW JERSEY", dated June 26, 2009, last revised June 3, 2010, the DEVELOPMENT/CONSERVATION AREA PLAN, prepared by Bohler Engineering, originally dated October 7, 2009 and revised/redated October 6, 2011 and the Wetlands Mitigation Plan revised through November 2, 2011, (collectively the "Revised Plans"). The Revised Plans depict the anticipated Project which is to be constructed within the Development Area depicted on the aforementioned Development/Conservation Area Plan. Upon issuance of the permits for the Project pursuant to the Revised Plans, the Department shall publish notice in the DEP Bulletin.

2. Grant of Conservation Restriction. Within thirty (30) days of the Department's issuance of the permits for the Revised Plans for the Project, the owner of the Property shall grant to

the Department a conservation restriction approved in advance in writing by the Department. The lands subjected to the conservation restriction shall be free of all buildings, dwellings, tenants, billboards and easements, including access easements, covenants, mortgages, leases, encumbrances, judgments, tax liens, outstanding taxes and any other instruments except for a cable easement granted to AT&T recorded May 21, 2009 in Deed Book 14300, page 1267 and following and utility easements granted to Jersey Central Power and Light Company recorded in Book 2676, page 343; Book 2898, Page 152; and Book 1277, page 305; and all of said lands shall be insurable at regular rates by a licensed and reputable New Jersey title company on the Department's Green Acres list. The lands subjected to the conservation restrictions shall include:

a. Block 77, Lot 27 (approximately 11.3 acres); Block 73 Lots 31 & 32 (approximately 42.9 acres); Block 73, Lot 21 (approximately 15.8 acres); and Block 73, Lots 3 & 4 (approximately 11.6 acres), and located in the Township of Manchester, and County of Ocean.

b. Block 77, lots 2, 4, 5 and 6 with 89.29 acres; and

c. Block 75.01, lot 3 with 21 acres;

(the lands identified in these paragraphs 2a, 2b and 2c are approximately 192 acres and shall be deemed the "Protected Lands")

d. Those portions of lots 14 and 15 of block 505 of the official 2011 Toms River tax map and lots 2, 3, 4(part) and 5 of block 44 of the official Manchester Township tax map where no development is proposed by the Revised Plans as depicted in the Development/Conservation Area Plan revised through October 6, 2011 which total approximately 20.9 acres shall be maintained as a permanent conservation restriction pine snake corridor area, (hereafter referred to as the "Paragraph 2d Lots").

e. All lands with conservation restrictions shall include a reverter clause which provides for reversion of such conservation restriction to the Petitioner or record owner, if not Petitioner, if the issuance of the permit by the Department is overturned on appeal or if the Department otherwise precludes development of the Project pursuant to paragraph 7. However, if any person has commenced any site disturbance, pre-construction earth movement or any construction of or for the Project, or if any of the Protected Lands have been disturbed, except for removal of waste, pollutants and contaminants or for habitat enhancement, all such reverter clauses shall lapse and expire.

3. Removal of Waste. The Petitioner shall remove to the Department's satisfaction all waste, pollutants and contaminant materials identified by Whitestone Associates and the Department on, above, below and throughout the Protected Lands to be conveyed to the Department and the Paragraph 2d Lots to be

conserved for pine snake protection and/or enhancement, respectively.

In so doing, the Petitioner shall ensure that all soils shall be at or below the numeric concentrations needed to meet Residential Cleanup standards, N.J.A.C. 7:26E-1 et seq., that is Remediation Standards, N.J.A.C. 7:26D-1 et seq., including, but not limited to, Residential Cleanup Standards for waste, contaminants and pollutants throughout the Protected Lands and the Paragraph 2d Lots, respectively. Further, all groundwater shall be at or below the numeric concentrations for all applicable standards for waste, pollutant and contaminant requirements as defined in N.J.A.C. 7:26E-1.8 and the Groundwater Quality Standards, N.J.A.C. 7:9C-1 et seq.

Adequate removal of waste, pollutants and contaminant materials identified on, above, below and throughout the Protected Lands to be conveyed and the Paragraph 2d Lots to be subjected to a conservation restriction in favor of the Department, respectively, shall be completed, so that once the pine snake habitat enhancement is completed, there is no need to subsequently disturb the pine snake habitat enhancements. In addition, prior to commencing the construction of the Project as defined in paragraphs 4 and 5 below, Petitioner shall either complete the required remediation or establish and maintain a remediation funding source in an amount acceptable to the

Department through the use of one of the instruments defined in N.J.A.C. 7:26C-5.2(f)1, 2, 3 or 4.

4. Timing. a. Any and all clearing of trees and vegetation shall only occur from August 1st through March 31st, except for the pine snake enhancements. ("Timing Restriction").

4b. For purposes of this Agreement, the terms "site disturbance," "pre-construction earth movement," or "construction of the Project" shall not include installation of the Herpetofauna Fence (defined in paragraph 5d), construction of the linear barrier wall along the perimeter of the pine snake corridor and the perimeter of the Development Area depicted on the Development/Conservation Area Plan; construction of the 1-acre freshwater wetlands mitigation area; construction of the stormwater basin #1 proposed on the construction side of the Herpetofauna Fence; and the placement of excavated material from stormwater basin #1 or the wetlands mitigation area in the Development Area adjacent to the proposed location of the linear barrier wall.

5. Sequence of Pine Snake Enhancement and Project Construction. a. Petitioner shall undertake and complete all pine snake habitat enhancement as discussed in the Environmental Review of the proposed Revised Plans, prepared by Golden, dated August 31, 2011 and the ENSP

Addendum dated December 2011 (collectively the "Environmental Review") and as required by any permits.

b. Petitioner shall first complete all pine snake enhancements for the Protected Lands, except for the planting of saplings specified in the Environmental Review, which planting of saplings shall be undertaken and completed in the next Spring planting season.

c. Upon completion of the pine snake enhancements for the Protected Lands, Petitioner shall then complete all pine snake enhancements on the Paragraph 2d Lots.

d. Petitioner shall next install and complete the herpetofauna fence on the Paragraph 2d Lots and then install and complete the linear barrier wall as shown on the Revised Plans, including the Development/Conservation Area Plan, dated October 6, 2011. The herpetofauna exclusion fencing system is referenced in the December 2011 ENSP Review Addendum and depicted on the Herpetofauna Fence exhibit, prepared by Bohler Engineering, last revised November 9, 2011, (the "Herpetofauna Fence"). The clearance width for the Herpetofauna Fence shall be no more than twenty (20) feet, that is no more than ten (10) feet on either side of the Herpetofauna Fence, inclusive of that structure. Upon the start of the installation of the Herpetofauna Fence, Petitioner shall retain a qualified

herpetologist ("Petitioner's herpetologist") who shall conduct daily site inspections of the Herpetofauna Fence, linear barrier wall and stormwater basin, and their associated clearing on the construction side and monitor, protect and remove to the habitat side all reptiles found on the construction side of the Herpetofauna Fence and on both sides of the linear barrier wall. Upon completion of the linear barrier wall, but no later than the issuance of a temporary certificate of occupancy for the Project, Petitioner shall remove the Herpetofauna Fence. Petitioner's herpetologist shall continue to conduct the daily site inspections until the clearing has been completed on the construction side of the linear barrier wall. No more than ten (10) days before clearing, pre-construction earth movement, site disturbance or construction of the Project, a qualified herpetologist shall conduct a thorough survey of the entire Development Area on the construction side of the Herpetofauna Fence and linear barrier wall and shall remove all reptiles to the habitat side of the Herpetofauna Fence. Subject to the Timing Restriction, the completion of all pine snake enhancements except for the planting of saplings, the completion of the Herpetofauna Fence and the linear barrier wall, Petitioner may remove trees and vegetation in the

Development Area whereupon Petitioner may then start pre-construction earth movement, site disturbance, and construction of the Project as authorized by the anticipated permits.

e. Upon completion of the Herpetofauna Fence and subject to the Timing Restriction and pursuant to paragraph 9 - Wetlands Habitat Offset, Petitioner may create the 1-acre freshwater wetlands mitigation area; create the stormwater basin #1 proposed on the construction side side of the Herpetofauna Fence as shown on the Revised Plans; and place excavated material from stormwater basin #1 or the wetlands mitigation area in the Development Area adjacent to the proposed location of the linear barrier wall.

6. Inspections and Escrow Sums. The Department, at its sole discretion, may make unannounced compliance inspections to ensure the appropriate creation of the enhanced pine snake habitat. In addition, prior to the start of any pre-construction earth movement, site disturbance or any construction of the Project authorized by the anticipated CAFRA and freshwater wetlands permits, Petitioner shall deposit in two escrow accounts the full sum of \$70,911 which shall be used by the Department to ensure successful project completion and ongoing monitoring and maintenance of the enhanced pine snake habitat as set forth in the Environmental Review, and a

refundable sum of \$15,344 for the completion of the sapling planting costs, respectively.

7a. Issuance of Notice for Protected Lands. Within ten (10) business days of completion of all required pine snake habitat enhancements for the Protected Lands except for planting of saplings, and receipt of said written notice by the Chief, ENSP, Division of Fish & Wildlife, 501 E. State Street, Mail Code 501-03, Trenton, NJ 08625-0420, the Department's ENSP shall issue a written notice to the Petitioner stating whether any further pine snake enhancement needs to be constructed or created throughout the Protected Lands, except for the planting of saplings. If ENSP issues a notice identifying enhancement deficiencies and the parties dispute said facts, the matter shall be referred to the Commissioner of the Department of Environmental Protection (the "Commissioner"), and in the meantime no site disturbance, pre-construction earth movement or construction of or for the Project shall commence. The Commissioner shall rule on any such dispute within thirty (30) days of the referral of said dispute. If ENSP does not issue any notice within ten (10) business days of its receipt of the written notice from Petitioner, the enhancements shall be deemed accepted.

7b. Issuance of Notice for Pine Snake Enhancement for the Paragraph 2d Lots. Within ten (10) business days of completion

of all pine snake habitat enhancements required for the Paragraph 2d Lots and receipt of said written notice by the Chief ENSP, Division of Fish & Wildlife, 501 E State Street, Mail Code 501-03, Trenton, NJ 08625-0420, ENSP shall issue a written notice to the Petitioner stating whether any further pine snake enhancement needs to be constructed or created for the Paragraph 2d Lots, except for the planting of saplings. If ENSP issues a notice identifying enhancement deficiencies and the parties dispute said facts, the matter shall be referred to the Commissioner and in the meantime no site disturbance, pre-construction earth movement or construction of or for the Project shall commence. The Commissioner shall rule on any such dispute within thirty (30) days of the referral of said dispute. If ENSP does not issue any notice within ten (10) business days of its receipt of the written notice from Petitioner, the enhancements shall be deemed accepted.

7c. Issuance of Notice for Herpetofauna Fence and Linear Barrier Wall. Within ten (10) business days of completion of the Herpetofauna Fence and the linear barrier wall along the perimeter of the pine snake corridor and receipt of said written notice by the Director of the Division of Land Use Regulation ("DLUR") 501 E. State Street, 2nd Floor, PO Box 420, Mail Code 501-02, Trenton, NJ , the Director or its designee shall issue a written notice to the Petitioner stating whether the

Herpetofauna Fence and the linear barrier wall is adequate. If DLUR issues a notice identifying enhancement deficiencies and the parties dispute said facts, the matter shall be referred to the Commissioner and in the meantime no site disturbance, pre-construction earth movement or construction of or for the Project shall commence. The Commissioner shall rule on any such dispute within thirty (30) days of the referral of said dispute. If DLUR does not issue any notice within ten (10) business days of its receipt of the written notice from Petitioner, the Herpetofauna Fence and linear barrier wall shall be deemed accepted.

d. Issuance of Notice for Vernal Pond. Within ten (10) business days of completion of the vernal pond and receipt of said written notice by the Director DLUR 501 E. State Street, Mail Code 501-02, Trenton, NJ 08625, the Director or its designee shall issue a written notice to the Petitioner stating whether the vernal pond has been constructed in accordance with the approved plan. If DLUR issues a notice identifying deficiencies and the parties dispute said facts, the matter shall be referred to the Commissioner. In the meantime, there shall be no filling of the existing freshwater wetlands. The Commissioner shall rule on any such dispute within thirty (30) days of the referral of said dispute. If DLUR does not issue any notice within ten (10) business days of its receipt of the

written notice from Petitioner, the vernal pond shall be deemed accepted.

8. Simultaneous Construction of Project and Conveyance of Fee. Upon the Department's issuance to Petitioner of the notices referenced in paragraphs 7a, 7b, and 7c, which notices acknowledge no further action needed, or the time frames contemplated for the issuance of the notices lapse without any notice from the Department, respectively, Petitioner may commence site disturbance, pre-construction earth movement and construction of or for the Project pursuant to the permits.

Upon Petitioner's commencement of the aforementioned site disturbance, pre-construction earth movement or construction of or for the Project, Petitioner shall simultaneously convey to the Department via affidavits of title with the appropriate corporate or partnership authorizing resolutions and via Bargain and Sale Deeds with Covenants Against Grantor's Acts for the Protected Lands which the Department may, in its sole discretion, determine to acquire. The Protected Lands shall be free of all waste, pollutants or contaminant materials or the Department shall hold the requisite financial assurances as per paragraph 3. The Protected Lands shall also be free of all buildings, dwellings, tenants, billboards, easements, access easements, covenants, mortgages, judgments, leases, encumbrances, tax liens, outstanding taxes and any other

instruments except as specified in paragraph 2 herein, and shall be insurable at regular rates by a licensed and reputable New Jersey title company on the Green Acres' list. The Department may defer conveyance of any portion of the Protected Lands, if it determines that adequate site remediation and clean-up has not been concluded for that portion of the Protected Lands. Upon the Department's issuance of a notice to the owner of the Protected Lands requesting fee simple conveyance, said owner shall convey said lands within thirty (30) days if said lands were not conveyed at the commencement of site disturbance, pre-construction earth movement or construction of the Project.

9. Wetlands Habitat Offset. The Petitioner has agreed to mitigate for .47-acre of impacts to isolated freshwater wetlands in the Development Area via the creation of a 1-acre mitigation area pursuant to the terms of the freshwater wetlands and CAFRA permits and pursuant to the "Wetland Plan" prepared by Bohler Engineering, dated June 3, 2010, the November 2, 2011 Wetlands Mitigation Plan and the November 2, 2011 Vernal Habitat Mitigation Proposal, which mitigation shall be equivalent in character to the wetlands habitat that will be impacted by the proposed development. The Petitioner shall construct and vegetate its proposed vernal pool prior to any site disturbance, pre-construction earth movement or filling of the isolated freshwater wetlands and associated transition areas in the

Development Area. Petitioner may only start site disturbance, pre-construction earth movement or construction of the vernal pool after Petitioner has submitted and Department has approved all of the documentation and plans required pursuant to the permit authorizing filling of the isolated wetlands.

10. No Separate Permit(s) for Habitat Enhancement. The Department shall not require a separate CAFRA or FWPA permit to effectuate the habitat enhancements.

11. Waiver and Release of Claims. Except as set forth in paragraph 11b of this Stipulation of Settlement, upon the issuance of the permits for the Revised Plans for the Project, Petitioner and Department hereby waive and release any and all claims of whatsoever nature that were asserted, could have been asserted or should have been asserted in this action concerning the appeals from permit denials, the Revised Plans, the Project, Development Area, Protected Lands, and the Paragraph 2d Lots, as well as any and all implied denials, all claims of violations of procedural and/or substantive due process, all claims of violations of equal protection, all claims and potential claims of inverse condemnation; and all claims and potential claims asserted under or that could have been asserted under the United States and the New Jersey Constitutions, all claims and potential claims asserted under or that could have been asserted under all federal and state statutes, including, but not limited

to, all claims and potential claims asserted under or that could have been asserted under the United States Constitution against the DEP and all other officials and employees of the State of New Jersey relating directly or indirectly to permit denials and associated or related actions or inactions concerning the Property, and in further waiver of and in full satisfaction of any and all right to reasonable costs, disbursements, and expenses, including, but not limited to, reasonable appraisal, attorney and engineering fees actually incurred pursuant to any and all state and federal statutes such as N.J.S.A. 20:3-1 and/or N.J.S.A. 20:3-26, rules and regulations are hereby dismissed with prejudice.

b. Petitioner retains the right to appeal both the June 2006 and the March 2010 permit denials, in the event that a court of competent jurisdiction overturns or reverses the anticipated permits, and the court's decision precludes the Petitioner from construction of the Revised Plans in the Development Area.

Petitioner and the Department agree the release and waiver set forth herein shall not be applicable to future actions or inactions occurring after the execution of this Agreement, including as set forth in paragraph 15. Petitioner and the Department further agree that the release and waiver set forth

herein shall not be applicable to action or inaction unrelated to this Agreement.

12. Dismissal with Prejudice of Permit Appeals. Within ten (10) business days after the lapse of time for appeal or affirmance by a court of competent jurisdiction of the Department's issuance of its permits needed to develop the Project or if Petitioner start site disturbance, pre-construction earth movement or construction of the Project, whichever is earlier, Petitioner shall submit a letter to the Department's Director of the Division of Land Use Regulation, stipulating that its withdrawal of the permit appeals is with prejudice.

13. Signature Authority. Each of the persons signing this Stipulation of Settlement in a representative capacity represents and warrants that he or she is an authorized representative of the entity for which he or she has signed and is duly authorized to execute this Stipulation of Settlement.

14. Effective Date. This Stipulation of Settlement shall become effective upon the execution hereof by the Petitioner and the Department.

15. Binding on Successors. This Stipulation of Settlement shall be binding upon the parties and their successors-in-interest, if any. The Department retains the right to enforce all of the pine snake enhancement throughout the Protected Lands

and the Paragraph 2d Lots; vernal pond installation and completion; the grants of conservation restrictions; the fee simple conveyances; and Remediation and clean-up pursuant to Groundwater Quality and Residential Cleanup Standards.

16. Governing Law. This instrument shall be governed by the laws of the State of New Jersey and any action commenced pursuant thereto shall be commenced via a petition to the Commissioner of the Department of Environmental Protection.

17. Third-Party Appeals. Any appeal of the permits for the Project by a third party which seeks an adjudicatory administrative hearing shall be reviewed by the Department pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-3.1, L. 1993, c. 359.

18. Drafting by Both Parties. This instrument shall be construed as if it were drafted by both parties and both parties waive all statutory and common law presumptions which would serve to have this document construed in favor, or against, any party as the drafter hereof.

19. Possible Invalidity. In the event that any provision of this Stipulation of Settlement shall be determined to be invalid, unlawful or in-effective, the remaining provisions shall not be affected thereby.

20. Entire Understanding. This Stipulation of Settlement constitutes the entire understanding between the parties hereto,

represents the final written expression of the parties with respect to the subject matter hereof, and may not be amended, altered or modified except by a writing signed by both parties.

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21. Counterparts. This Stipulation of Settlement may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION DIVISION OF LAND USE REGULATION

By: 

JAYLIN HOLDINGS, LLC

By: _____

By: _____

Dated:

12/20/11

Dated:

walmart.settlementdecembertwenty2011

21. Counterparts. This Stipulation of Settlement may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF LAND USE REGULATION

By: _____

Dated:

JAYLIN HOLDINGS, LLC

By: *Wayne A. Grunin*

Dated: 12/20/11

By: *Linda H. Grunin*

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