

**AMENDED DECLARATION OF RESTRICTIONS**

THIS **AMENDED DECLARATION OF RESTRICTIONS** (“**Amended Declaration**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_ by **SAWYER’S LANDING LLC, CIMINELLI MUIR WOODS, LLC**, a limited liability company organized under the laws of the State of New York, having its office at 350 Essjay Road, Williamsville, NY (“**Declarant**”).

**RECITALS**

~~WHEREAS, this Amended Declaration has been executed by Declarant for the purpose of modifying and amending the Declaration of Restrictions recorded at the Erie County Clerk’s Office on June 21, 2018 at Liber 11330 of Deeds at Page 8243 (the “**Declaration of Restrictions**”).~~

WHEREAS, Declarant is the owner of a portion of the real property subject to the Declaration of Restrictions recorded at the Erie County Clerk’s Office on June 21, 2018 at Liber 11330 of Deeds at Page 8243 consisting of approximately 17.42 of real property located at 50 Dodge Road (formerly consisting of approximately 326 acres of real property located at a portion of 1081 and 1121 North French Road (hereinafter “**Site A Subject Property**”) that is more particularly by the metes and bounds legal description of Site A attached at **Schedule “1”** hereto;

WHEREAS, Site A the Subject Property is zoned New Community District (“**NCD**”) pursuant to the Zoning Map of the Town of Amherst and the use of land within the New Community District is regulated pursuant to the land use classifications contained in the Zoning Code of the Town of Amherst;

WHEREAS, Declarant petitioned the Town Board of the Town of Amherst (hereinafter “**Town Board**”) to approve an amendment of the Declaration of Restrictions limited to the restrictions that apply to Site A as described in the legal description of Site A at **Schedule “1”**; amend the land use classifications of portions of the Subject Property that is owned by the Declarant;

~~WHEREAS, on December 3, 2007, the Town Board issued a Findings Statement pursuant to the State Environmental Quality Review Act (“SEQRA”) and the Town Board also voted to: 1.) approve Amendment #51 to the Audubon Development Plan, 2.) amend the land use classifications of portions of the Subject Property from NCD Neighborhood District and NCD Major Open Space to NCD General Commercial, NCD Restricted Industrial and NCD Major Open Space;~~

~~WHEREAS, as the Town Board imposed conditions in connection with its decisions to issue a Findings Statement pursuant to SEQRA and amending the land use classifications of portions of the Subject Property;~~

WHEREAS, on \_\_\_\_\_, 2024, the Town Board approved the request to amend the Declaration of Restrictions for Site A. issued an Amended Statement of Findings pursuant to SEQRA on December 7, 2015;

NOW, THEREFORE, in exchange for good and valuable consideration the sufficiency of which is acknowledged, the Declarant agrees to restrict the future use of Site A the portions of the Subject Property (or its entirety when expressly specified) in accordance with the conditions imposed by the Town Board that are subject to this Amended Declaration of Restrictions as follows:

1. All construction equipment and vehicles that will be utilized in connection with the development of Site A the Subject Property pursuant to site plans and final plats to be approved by the Town of Amherst Planning Board shall be expressly prohibited from utilizing the existing streets within Pleasant Acres Part II & III Subdivision (Bucyrus Heights neighborhood) the Franklin Heights Subdivision, including but not limited to Lynette Lane, for purposes of egress and ingress to the Subject Property.
2. The residential components of the project on Site A shall be prohibited from utilizing the condominium form of ownership.
3. ~~On those portions of the Subject Parcel where commercial development (excluding all residential uses) will be located directly adjacent to existing residential areas (i.e. Bucyrus Heights), minimum setbacks have been established for the purpose of providing an adequate buffer.~~ The following minimum setbacks will apply only to development of portions of Site A the Subject Property that are directly adjacent to to the Pleasant Acres Part II & III Subdivision (Bucyrus Heights neighborhood) (“Residential Lot Line”):
  - ~~All commercial development (buildings and parking areas) will have a minimum setback of fifty feet (50'), with the area within forty feet (40') of adjacent residential property boundaries remaining undisturbed so that existing trees and brush remain as a buffer. The planting of additional trees and shrubs by the Declarant within the minimum setback area may be required by the Town of Amherst during the site plan review process to supplement the existing vegetation in order to provide adequate buffers.~~
  - ~~A combination of earthen berms and new vegetation will be required in those portions of the minimum setback area where there is not sufficient existing vegetation to provide an adequate buffer. The minimum height at the top of berms shall be three feet (3'), and the maximum slope shall be 1 on 3 (33%) to promote the growth and long-term viability of trees and shrubs planted on the berms. Berms should have a natural appearance by varying their width and height. The Town of Amherst will verify compliance with this requirement during the site plan review process.~~
  - Site A: Site A is the western portion of the Subject Parcel that is proposed to be utilized for flex office/R&D buildings and it is located directly south of the existing Bucyrus Heights subdivision. A legal description of Site A is attached as Schedule “2”. The minimum setbacks for development within Site A shall be as follows:

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- ~~60 ft. minimum required building setback from residential lot line.~~
- 60 ft. minimum required parking setback from residential lot line. 30 ft. minimum building setback from residential lot line for attached and detached two-family townhome style units.
- 400 ft. minimum building setback from residential lot line for four-story mixed use buildings.
- 500 ft. minimum building setback from residential lot line for four-story multifamily buildings.
- 450 ft. minimum setback from residential lot line for four-story climate controlled storage building.
- 60 ft. parking setback from residential lot line

The planting of additional trees and shrubs by the Declarant within the minimum setback areas may be required by the Town of Amherst during the site plan review process to supplement the existing vegetation in order to provide adequate buffers.

- ~~Site B: Site B is the center portion of the Subject Parcel that will be utilized for office space. A legal description of Site B is attached as **Schedule “3”**. The minimum setbacks for development within Site B shall be as follows:~~
  - ~~60 ft. minimum building setback from residential lot line. If the height of any proposed office buildings exceeds 50 feet, the required minimum building setback shall be equal to or greater than the height of the proposed office building.~~
  - ~~60 ft. minimum parking setback to residential lot line.~~

4. The following maximum building heights shall apply only to development of portions of Site A the Subject Property that are directly adjacent to the Pleasant Acres Part II & III Subdivision (Bucyrus Heights neighborhood) (“Residential Lot Line”): to the commercial components of the development of the Subject Parcel:

- ~~Site A (western portion of the project site) The maximum building height for buildings within Site A as described in **Schedule “2”** shall be as follows: Maximum building height for mixed-use buildings, multifamily buildings and climate controlled storage building shall be four-stories and 60 ft. as measured from the finished grade to the top of any parapet (excluding any rooftop mechanical equipment).~~
- Maximum height of any residential buildings within 500 ft. of a residential lot shall be 35 ft.

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- ~~Maximum building height shall be 40 ft. as measured from the finished grade to the top of any parapet (excluding any rooftop mechanical equipment).~~

All mechanical equipment shall be properly screened in accordance with the standards contained in the Zoning Code adopted by the Town Board in May of 2006.

- ~~Site B (center portion of the Subject Parcel) The maximum building height for buildings within Site B as described in Schedule “3” shall be as follows:~~
- ~~There will not be a maximum height for office buildings to be constructed on Site B. All office buildings to be constructed on Site B will be required to comply with a minimum required setback that shall be the greater of fifty feet (50’) feet or the height of the proposed office building at the point of its maximum height (including rooftop mechanicals, etc.).~~

5. ~~The portions of the Subject Property reclassified to New Community District — General Commercial (“NCD-GC”) by the Town Board as described in the attached Schedule “4” shall be prohibited from being utilized for the following categories of land uses:~~

- A. ~~Automobile sales and service facilities (except vehicles used primarily on the subject property);~~
- B. ~~Veterinary clinics or kennels; and~~

~~Gasoline service stations shall be prohibited around the existing approximately 32-acre lake on the southeastern portion of the Subject Property.~~

The above restrictions contained in numbered paragraphs 1, 2, 3 ~~and~~, 4 ~~and~~ 5 shall be binding on all parties claiming thereunder and shall run and touch the land consisting of Site A except that the above restrictions can be changed, modified or eliminated by a majority vote of the Town Board.

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SIGNATURE(S) ON FOLLOWING PAGE]

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**50 Dodge Road 1081 & 1121 North French Road — Town of Amherst**



**SCHEDULE 1**

**LEGAL DESCRIPTION OF 50 DODGE ROAD (SITE A)**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, State of New York, being Part of Lot 76, Township 12, Range 7 of the Holland Land Survey (so-called) bounded and described as follows:

COMMENCING at the point of intersection of the centerline of Dodge Road with the centerline of Sweet Home Road; thence: south along the centerline of Sweet Home Road, a distance of 86.08 feet to a point; thence: east, at right angles with said centerline, a distance of 679.33 feet to the POINT OR PLACE OF BEGINNING of the parcel hereinafter described:

THENCE: through lands now or formerly of New York State Urban Development Corporation, the following fifteen (15) courses and distances:

- 1.) N-00°-55'-59"-W, a distances of 304.81 feet to a point;
- 2.) N-88°-55'-52"-E, a distance of 625.24 feet to a point;
- 3.) N-02°-04'-02"-W, a distance of 118.24 feet to a point;
- 4.) N-88°-55'-52"-E, a distance of 506.27 feet to a point;
- 5.) S-01°-04'-08"-E, a distance of 120.35 feet to a point;
- 6.) S-64°-48'-00"-W, a distance of 35.05 feet to a point;
- 7.) S-29°-42'-37"-W, a distance of 135.73 feet to a point;
- 8.) S-06°-01'-17"-E, a distance of 361.98 feet to a point;
- 9.) S-45°-04'-18"-E, a distance of 271.44 feet to a point;
- 10.) S-01°-04'-00"-E, a distance of 314.49 feet to a point;
- 11.) S-65°-24'-13"-W, a distance of 407.54 feet to a point;
- 12.) N-85°-10'-51"-W, a distance of 34.02 feet to a point of curvature;
- 13.) Northwesterly, on a curve to the right having a radius of 561.62 feet, an arc distance of 516.33 feet to a point of tangency;
- 14.) N-32°-30'-21"-W, a distance of 457.24 feet to a point of curvature;
- 15.) Northwesterly, on a curve to the left having a radius of 749.00 feet, an arc distance of 272.69 feet to the above described POINT OR PLACE OF BEGINNING containing 24.812 acres be the same more or less.