

DEVELOPMENT AGREEMENT

**Westwood Neighborhood
772 North Forest Road, 375, 385 Maple Road & 391 Maple Road
(Town of Amherst Planning Department File No. Z-2014-23)**

THIS DEVELOPMENT AGREEMENT (“Agreement”), made this ___ day of _____, 20__ by and between the Town of Amherst, a municipal corporation organized under the State of New York (“Town”) and Mensch Capital Partners, LLC, a limited liability company formed pursuant to the laws of the State of New York, having an office at 5477 Main Street, Williamsville, New York 14221 (the “Project Sponsor”).

WITNESSETH:

WHEREAS, Mensch Capital Partners, LLC (“Project Sponsor”) submitted a Rezoning Application (“Application”) to the Amherst Town Board (“Town Board”) on July 14, 2014, requesting an amendment of the zoning classification of portions of the property at 772 North Forest Road, 375 Maple Road, 385 Maple Road & 391 Maple Road (“Project Site”) from Recreation Conservation District (“RC”) to Traditional Neighborhood Development District (“TND”), Multifamily Residential District Seven (“MFR-7”) and General Business District (“GB”) in furtherance of the redevelopment of the approximately 170 acre Project Site into a mixed-use neighborhood including residential, multi-family, commercial, office, senior living and permanent open space components known as the Westwood Neighborhood (“Proposed Action”); and

WHEREAS, the Town Board declared Lead Agency status on September 8, 2014 and determined that the Proposed Action may have potentially significant adverse environmental impacts on the environment and as such required that a Draft Generic Environmental Impact Statement (“DGEIS”) to be prepared in connection with the coordinated environmental review of the Proposed Action pursuant to the State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, The Project Sponsor submitted an initial DGEIS on July 14, 2014; and

WHEREAS, on September 7, 2014, the Town Board adopted a resolution by which it determined the initial DGEIS was not was not adequate for public review; and

WHEREAS, the DGEIS was determined to be complete and adequate for public review by the Town Board on December 28, 2015; and

WHEREAS, the Planning Board held a public hearing on the DGEIS and Application on November 17, 2016; and

WHEREAS, The Project Sponsor submitted an Amended Application on December 19, 2016; and

WHEREAS, the Planning Board held a second public hearing on the DGEIS and Application on January 19, 2017; and

WHEREAS, The Project Sponsor submitted an Amended Application on March 20, 2017;
and

WHEREAS, on _____ 20__, the Planning Board held a third public hearing and finalized its review of the DGEIS and Application and adopted a resolution providing its recommendation to the Town Board; and

WHEREAS, a public hearing on the DGEIS and Application was held by the Town Board on _____; and

WHEREAS, following acceptance of the completed DGEIS and public hearings held by the Planning Board and the Town Board, the Town Board accepted and issued the Final Generic Environmental Impact Statement (“FGEIS”) on _____, and a Notice of Completion of the FGEIS was duly filed with the Town Clerk’s Office on _____; and

WHEREAS, the Town Board having thoroughly evaluated the content of the DGEIS, the FGEIS and all other documents related to the Proposed Action and issued a Findings Statement on _____ in accordance with 6 NYCRR Section 617.11 duly; and

WHEREAS, the Findings Statement considers the relevant environmental impacts, provides a thorough rationale for the Town Board’s determination, and sets forth the mitigation measures to be implemented that were identified as the reasonable considerations in avoiding or minimizing potential adverse environmental impacts to the maximum extent practicable in association with the Application and Proposed Action; and

WHEREAS, in accordance with Part 6, Section 6-9-1, Planned Unit Development Process (“PUD”) of the Town of Amherst Zoning Code (“Zoning Code”), any development or redevelopment of a portion of any lot measuring 30 acres in size or larger is subject to the PUD Review process to allow flexibility to respond to market demands and needs of tenants. The Project Sponsor provided a Conceptual Master Plan (“Concept Plan”) that has now become part of the Application in accordance with Section 8, Part 8-4-1(B) of the Town of Amherst Zoning Code (“Zoning Code”) and as such the Concept Plan has been thoroughly reviewed by the Planning Board and the Town Board concurrently with the review of the Application and Proposed Action; and

WHEREAS, the determination by the Town Board of whether to approve rezoning or a PUD application includes the authority and discretion to adjust any regulations, standards or criteria of the Zoning Code based on its review of the proposed Concept Plan.

NOW THEREFORE THE TOWN BOARD FINDS AND DETERMINES THAT:

1. This declaration of conditions and requirements has been issued based on the authority of the Town Board as set forth within Section 8-4-6(G) of the Zoning Code whereby the Town Board may, in order to protect the public health, safety, welfare and environmental quality of the community, attach to its resolution approving an Application additional conditions or requirements consistent with the PUD process and generally consistent with the policies of the

Comprehensive Plan. These conditions and restrictions are issued by the Town Board in reliance upon the mitigative measures as determined necessary and appropriate within the Findings Statement issued for the Proposed Action having been prepared in compliance with 6 NYCRR Section 617.11.

2. The following conditions and restrictions shall be considered as conditions precedent to the issuance of building permits and certificates of occupancy for the Proposed Action. The Project Sponsor hereby accepts and acknowledges that the conditions and restrictions herein imposed shall be permanent and binding upon the Project Sponsor and any subsequent owner of all or portions of the Project Site.

3. The following conditions and restrictions shall be considered as provisions applicable to the development of the Project Site as mixed use neighborhood and shall be imposed in combination with all other applicable laws, rules and regulations as set forth in the Zoning Code.

4. The Town Board and the Project Sponsor intend to restrict the development of the Project Site as follows:

A. To provide for the development of a fully integrated, mixed-use, pedestrian-oriented neighborhood that encourages walkability and minimizes traffic congestion, sprawl, infrastructure costs and environmental degradation to the maximum extent practicable based on the following principles:

i. An identifiable mixed use neighborhood center with edges that are consistent in design, scale and context with the surrounding neighborhood;

ii. Uses and housing types that are mixed and in close proximity to one another;

iii. Density is highest in the center portion of the PUD as depicted on the Concept Plan and decreases with distance from the defined center;

iv. Substantial portions of the Project Site are to consist of permanent open space including areas that will be accessible to the public;

v. Pathways, sidewalks and circulation are designed to encourage and provide opportunities for walking and biking, as alternatives to vehicular trips;

vi. Streets are interconnected to minimize dead ends; and

B. To provide for a mixed-use neighborhood per the Design Standards of the Traditional Neighborhood District, as set forth in Section 5-6 of the Zoning Code. To achieve this goal, the architectural guidelines attached as **Exhibit "A"** will be implemented by the Town of Amherst Planning Board ("Planning Board") during review of the components of the Project requiring site plan and subdivision approval. As a further assurance to the Town Board, the Project Sponsor intends to retain architectural approval over the buildout phases of the various components of the project in an effort to achieve an architectural style throughout the Project Site that is uniform and consistent with Project Sponsor's vision for the Project Site.

5. Site Development Requirements and Restrictions - The Project Sponsor shall comply with the following requirements and restrictions in connection with the development of the Project Site:

A. Obtain all applicable approvals and permits for the Project from governmental agencies and municipal departments, including but not limited to site plan approvals, subdivision approvals, building permits, sanitary sewer permits, driveway curb cut and highway work permits, stormwater SPDES permits, and certificates of occupancy.

B. The development of the Project Site shall be generally consistent with the Conceptual Master Plan dated _____, submitted by the Project Sponsor on _____, and considered and approved by the Town Board on _____, 20____ as attached as **Exhibit “B”**. The approved Conceptual Master Plan is intended to guide the future development of the Project Site and is not meant to illustrate a precise layout of the location of the various components of the mixed use neighborhood.

C. The development of the Project Site shall be further limited to the uses, building heights, and number of units identified in the Parcel Plan (“Parcel Plan”) which is attached as **Exhibit “C”**.

D. The Project Sponsor shall comply with all mitigation measures set forth in the Statement of Findings adopted by the Town Board on _____, which are all incorporated herein in their entirety by reference.

E. The Project Sponsor shall comply with the Brownfield Cleanup Agreement dated March 10, 2015 between Mensch Capital Partners, LLC and the New York State Department of Environmental Conservation for the for the Project Site.

F. The Project Sponsor shall record in the Erie County Clerk’s Office, the Declaration of Restrictions in form and substance as attached hereto as **Exhibit “D”**. A copy of the recorded Declaration of Restrictions and the recording receipt shall be provided to the Town Attorney’s Office, Building Department, Planning Department and the Town Clerk’s Office.

G. The Project Sponsor, as well as any association to be formed by the Project Sponsor, and its successors and assigns, shall maintain and be responsible for (a) all privately owned permanent open space / conservation areas within the boundary of the Project Site at its own cost and expense; (b) all sidewalks; and (c) the approved stormwater management system including the ponds within the boundary of the Project Site.

H. The Project Sponsor, as well as any association to be formed by the Project Sponsor, and its successors and assigns, shall allow access to all drainage facilities to the Town of Amherst and its employees for the purposes of maintenance. Said access shall be during normal business hours except in the case of emergencies.

I. Any transfer of ownership of all or portions of the Project Site by the Project Sponsor, including any transfer of development rights, shall subject the transferee to the terms contained in this Agreement, the Declaration of Restrictions, the mitigation measures contained in

the Findings Statement and the Resolution adopted by the Town Board on _____ approving the amendment of the zoning classification of portions of the Project Site.

6. Site Specific Zoning District Amendments and Variances - In an effort to achieve the desired concentration, density and proximity of residential uses to the proposed neighborhood center and also to provide for an opportunity to provide substantial amounts of contiguous permanent open space areas, the Town hereby authorizes the following amendments and/or variances to the following zoning districts as it specifically relates to the Application and the Project Site:

A. Traditional Neighborhood Zoning District (TND) - Section 5-6 of the Zoning Code limits the density of attached dwelling units in the TND to four (4) units per wholly residential building. This standard limits the ability to provide for a concentration of housing types and residents that engage the mixed-use district and that will support the proposed Neighborhood Center. Based on the objective of the Westwood PUD and the purpose statement for the TND zoning district, the Town Board hereby authorizes a maximum density of forty-eight (48) units per wholly residential attached dwelling building on the portion of the Project Site to be rezoned to TND in order to accommodate the proposed mixed-use neighborhood project. Notwithstanding the list of Permitted Principal Uses in the TND district identified in Section 5-6-2 of the Zoning Code, the following uses shall be prohibited on the Project Site: (1) animal grooming, animal hospital or veterinarian; and (2) service station.

- i. The Concept Plan attached as Exhibit B includes proposed patio homes within the TND district. The minimum front yard, rear yard and side yard setbacks for these residential areas within the TND district shall be restricted as follows:

	Front Yard Setback (Minimum)	Rear Yard Setback (Minimum)	Side Yard Setback (Minimum)
Single-Family Homes (approximately 12,000 square foot lots)	30 feet	35 feet	8 feet
Larger Patio Homes (approximately 8,000 square foot lots)	25 feet	20 feet	5 feet
Smaller Patio Homes (approximately 6,000 square foot lots)	Minimum Dimensional Standards per §3-15-5 of the Zoning Code		

- ii. The Concept Plan attached as Exhibit B also includes a proposed fire substation to service the demands of the Snyder Fire Department. The land will be donated to the fire department for its possible future construction of

a fire station that it is expected would consist of approximately 3,600 square feet and be one story in height.

- iii. The overall development within Parcel VI (Neighborhood Center), as identified on the attached Parcel Plan (Exhibit C) shall not exceed 152,000_square feet of office space, 159,000 square feet of commercial space and 650 Residential Units (“Units”). For the purposes of this Agreement, Residential Units shall include all multi-family residences included in Parcel VI. Furthermore, within Parcel VI, no individual retail establishment shall be greater than 30,000 square feet in size.

B. General Business District (GB) - The Westwood PUD has been approved to include a four-story hotel at the core of the Neighborhood Center. Pursuant to Section 5-6-2 of the Zoning Code, hotels and motels are not included as a permitted use within the TND zoning classification. Therefore, the zoning classification of the 1.16 acres of land associated with the four-story hotel located at the core of the Neighborhood Center has been amended to General Business District (“GB”). Principal Use Structures within the GB zoning district require a minimum front yard setback of 75 feet, a minimum rear yard setback of 25 feet and minimum side yard setbacks of 25 feet. As it is the intent of the Westwood PUD to develop a pedestrian friendly center with an engaging streetscape that encourages walking, the setbacks for GB zoned property as cited above would not be conducive to the intent of the Project intent PUD objectives. By comparison, per Section 5-6-2 (B) of the Zoning Code, the TND setback regulations permit a maximum front yard setback of 6 feet and do not require minimum rear yard or side yard setbacks adjacent to nonresidential development. Relative to the general spirit and development approach of the Neighborhood Center at the site, compliance with the minimum GB setbacks would detract from the Project intent. Therefore, the Town Board hereby authorizes the utilization of TND setback standards for the construction of the four-story hotel (principal use structure) on the 1.16 acres of the Project Site zoned GB in order to accommodate the proposed mixed-use project. Notwithstanding the list of Permitted Principal Uses in the General Business district, as identified in Section 4-4-2 of the Zoning Code, the following uses shall be prohibited on the Project Site: (1) animal grooming, cat boarding facility, hospital or veterinarian; (2) dog day care facility; (3) farm equipment sales or service; (4) funeral home; (5) house and camping trailer sales, camping equipment and accessories and related repair and service; (6) nurseries for sale of plants, shrubs and trees; (7) vehicle parts sales; (8) vehicle sales (new), rental, leasing and related repair, used vehicle sales and vehicle rental in conjunction with new vehicle sales only; and (9) wholesale store.

7. This Agreement may be altered or amended only by a written instrument setting forth such amendments and modifications as approved by the Town Board and signed by all parties to this Agreement.

8. This Agreement shall be governed by the laws of the State of New York.

[REMAINDER OF PAGE INTENTIONALLY LEFT
BLANK SIGNATURE PAGE FOLLOWS]

Date: _____, 20__

TOWN OF AMHERST

By: _____
Dr. Barry A. Weinstein
Supervisor

Date: _____, 20__

MENSCH CAPITAL PARTNERS, LLC

By: _____
Andrew J. Shaevel
Managing Partner