

EXHIBIT “M”

Planned Unit Development Process (“PUD”) Assessment Prepared Pursuant to Section 6-9 of the Zoning Code

I. Introduction:

The Westwood Project is subject to the Planned Unit Development (“PUD”) review process as set forth in Section 6-9 of the Town of Amherst Zoning Ordinance (“Zoning Code”). The PUD review process applies to the development or redevelopment of any site that is 30 acres in size or greater.¹ Section 6-9-1 of the Zoning Code was adopted by the Town Board on May 20, 2013 and Section 6-9-1 of the Zoning Code (titled “Purpose”) states that the purpose of the PUD process is “to permit coordinated developments that allow flexibility to respond to market demands and the needs of tenants.” Section 6-9-2 of the Zoning Code establishes criteria for projects subject to the PUD review process are intended to result in “optimum development and use of land in the Town.”²

This Exhibit “M” of the Rezoning Application has been prepared by the Project Sponsor and project consultants to provide information regarding the concerted effort made by the Project Sponsor to design an integrated mixed-use redevelopment project consistent with the criteria and standards contained in Section 6-9 of the Zoning Code for the purpose of ensuring that projects involving the development or redevelopment of parcels that are 30 acres or larger will be consistent with the planning objectives the Town has established for ensuring high quality projects.

¹ See Section 6-9-1 of the Zoning Code which sets forth the criteria in which the PUD standards contained in Section 6-9 of the Zoning Code apply. It is important to mention that Section 6-9-1 of the Zoning Code states that the PUD process can run concurrently with the review of a requested rezoning.

² See Section 6-9-2A of the Zoning Code.

II. Description of Planned Unit Development (“PUD”) Review Process:

The PUD Application Process is described within Section 8-4 of the Zoning Code. This section of the Zoning Code indicates the Project Sponsor must provide a conceptual development plan that is consistent with the Zoning Code, Comprehensive Plan and the PUD Development Standards as set forth in Section 6-9-3 of the Zoning Code. A full size color version of the Conceptual Master Plan for the mixed-use project is provided at Exhibit “G” of this Rezoning Application and this plan constitutes the conceptual development plan for purpose of the PUD review process.

In reviewing the PUD conceptual development plan, the Town Board may choose to adjust any regulations, standards or criteria in the Zoning Code in order to protect the public health, safety, welfare and environmental quality of the community. Any additional conditions and/or adjustments to the existing Zoning Ordinance as per the PUD application review and approval process must be clearly detailed by way of an official attachment to the resolution approving said application.

This Exhibit “M” of the Rezoning Application provides a description of the Westwood Project and an assessment of conformance with the PUD Use Regulations and Development Standards set forth in Sections 6-9-2 and 6-9-3 of the Zoning Code.

The summary below also includes a description of any necessary conditions and/or adjustments to the underlying zoning regulations being sought by the Project Sponsor to meet the intent and objectives of the PUD application. The Project Sponsor has also developed project design guidelines to assist the Town in connection with the PUD review process and a complete copy of the “Westwood Design Standards Guide” is provided at Exhibit “O”.

The intent of the Design Guidelines is to provide a framework of desired characteristics and standards for the development of the Westwood mixed-use neighborhood. It is important to mention that the framework is intended to be flexible and to acknowledge the uniqueness of the individual districts that comprise the proposed mixed-use neighborhood.

III. Planned Unit Development Process Use Regulations:

The PUD process includes additional standards and regulations with respect to site planning, layout, and open space requirements that are designed to work in tandem with the underlying zoning regulations to achieve a balanced development approach. The underlying zoning requirements concerning permitted uses, accessory uses, dimensional standards, parking, and general development standards still apply.³ The PUD process enhances these existing standards with specific design principles that are intended to ensure high quality development and redevelopment projects that are consistent with planning objectives contained in Section 6-9 of the Zoning Code and the adopted Bicentennial Comprehensive Plan (“Comprehensive Plan”).

IV. Planned Unit Development Standards:

Section 6-9-3 of the Zoning Code is titled “Development Standards” and consists of a detailed description of the standards applicable to projects subject to the PUD review process. This section of the Zoning Code consists of seven categories of standards for projects subject to the PUD review process consisting of the following: off-street parking and loading; landscaping, buffering and screening; local circulation system; topography and site appearance; open space; utilities and signs.

³ See Section 6-9-1C(1) of the Zoning Code stating, “All uses permitted in the underlying zoning district shall be permitted in a PUD as provided in this Section”

A detailed description of the applicable design criteria and a description of the manner by which the Project Sponsor has designed a Conceptual Master Plan for the proposed integrated mixed use neighborhood project that is consistent with the detailed PUD Development Standards is provided below. For purposes of convenience, each of the applicable categories of Development Standards as contained in Section 6-9-3 of the Zoning Code has been listed below in *italics* followed by description of the manner by which the Westwood Project is consistent with the applicable standards.

A. Off-Street Parking and Loading (Section 6-9-3A):

Section 6.9.3A of the Zoning Code is titled “Off-Street Parking and Loading” and contains six performance standards that apply to off-street parking and loading areas. More specifically, Section 6-9-3A of the Zoning Code states as follows:

“Off-Street Parking and Loading. The design criteria set forth in this Section are intended to provide desirable latitude and freedom to encourage variety in the location and arrangement of uses, to encourage convenience in accessibility to these uses through provision of pedestrian and bicycle pathways and public transportation services and to achieve the efficient sharing of parking and loading facilities by multiple uses. Therefore, in lieu of specific minimum parking and loading requirements and other similar considerations, the following performance standards shall apply:

- (1) Pedestrian connection between parking areas and buildings shall be along walkways to the extent necessary to assure pedestrian safety.*
- (2) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping and ease of access and shall be developed as an integral part of an overall site design.*
- (3) Any above-grade loading facility shall be screened from public view to the extent necessary to eliminate unsightliness and should be separate from private vehicles and pedestrians where feasible.*
- (4) The design of buildings and parking facilities shall take advantage of the topography of the site where appropriate to provide separate levels of access.*

- (5) *Off-street parking and loading spaces shall be provided for all new buildings at the time of erection and for all enlargements of existing buildings and shall be maintained in usable shape and good condition.*
- (6) *Off-street parking and loading spaces shall be provided so as to minimize overflow of parked or standing vehicles onto public or common vehicular or pedestrian rights of way.”*

Section 6-9-3A of the Zoning Code acknowledges the benefits of flexibility in providing off-street parking and requires an applicant to give appropriate consideration to pedestrian access and safety and the screening of parking areas that can be unsightly is not properly designed based on the content of an overall proposed project and nearby existing land uses. The Conceptual Master Plan for the proposed mixed-use project satisfies the six performance standards contained in Section 6-9-3A of the Zoning Code by providing a layout that integrates pedestrian pathways and trailways throughout the mixed use project that feature direct connections and extensions to primary parking areas.

The parking areas within the Westwood Neighborhood have been carefully designed to provide for safe and efficient access to the interior road network. The site landscaping has been specifically designed to include measures to provide the screening of parking areas.⁴

In order to ensure the safe management of vehicular, pedestrian, and bicycle traffic, the Project Sponsor has carefully developed a circulation plan that includes consideration for vehicular road networks, vehicular parking areas, pedestrian sidewalks, and recreational trailways.⁵

⁴ Please refer to Section VII. Landscape Strategy of the Westwood Design Standards Guide (attached to this Rezoning Application as Exhibit “O”) for a full description of landscaping standards that will apply to parking areas.

⁵Please refer to Section VI. Circulation of the Westwood Design Standards Guide for a full description of the circulation plan for the Westwood Neighborhood.

B. Landscaping, Buffering and Screening (Section 6-9-3B):

Section 6-9-3B of the Zoning Code is titled “Landscaping, Buffering and Screening” and contains three subsections titled “Landscape Features and Building Arrangements”, “Landscaping Standards”, “Aesthetics” and “Screening” that are each reproduced below and addressed as follows:

*“(1) **Landscaping Features and Building Arrangements.** The design criteria set forth in this Section supercede those in § 7-2. They are intended to provide considerable latitude and freedom to encourage variety in the arrangement of the bulk and shape of buildings, open space and landscape features. Buildings may be arranged in various groups, courts, sequence or clusters with open spaces organized and related to the buildings so as to provide privacy and to form a unified composition of buildings and space. Although latitude in design is provided and encouraged, the following design conditions shall, however, be assured in any PUD. Yards, building setback and spacing and building height and shape, landscape features and building arrangement shall be designed in a manner to assure:*

- (a) Proper light, air and views for the residents, tenants and the public;*
- (b) Safety in accommodating pedestrian and vehicular circulation and vehicular storage and service;*
- (c) Usability of and convenient access to open space;*
- (d) Screening to minimize the unsightliness and monotony of parked cars;*
- (e) Availability of open land for landscaped features, recreation or other private uses;*
- (f) Privacy between adjacent buildings and intersecting wings of buildings, from streets, parking and recreation areas;*
- (g) The creation of a variety of common open spaces and private areas, through the planning of landscape features such as walls, fences, hedges and other features.”*

Section 6-9-3B(1) of the Zoning Code indicates the landscaping, buffering and screening standards applicable to the PUD review process are intended “to provide considerable latitude and freedom to encourage variety in the arrangement of the bulk and shape of buildings, open

space and landscape features. Buildings may be arranged in various groups, courts, sequence or clusters with open spaces organized and related to the buildings so as to provide privacy and to form a unified composition of buildings and space.” Section 6-9-3B(1) of the Zoning Code as cited above contains seven performance standards that apply to ensure that landscaping, buffering and screening elements fulfill the PUD planning objectives and the Conceptual Master Plan has been designed in consideration of these criteria.

The Project Sponsor has carefully designed the Westwood Neighborhood to take advantage of and sustain existing natural resources on the Project Site. Consistent with this planning objective, the portions of the Project Site that contain environmental features such as pockets of mature tree growth and the Ellicott Creek corridor, have been incorporated into the permanent open space areas that are provided on the Conceptual Master Plan. The total permanent open space areas on the Project Site will be comprised of approximately 81 acres including the approximately 39 acre Westwood Park. The project design reflects an effort to evenly disperse the permanent open space throughout the Project Site to provide convenient access and usability of open space from the various mixed use components. The approximately 39 acre Westwood Park, which will include an approximately 6.5-acre new lake, will provide a significant space for recreational activity and public gatherings. While the existing landscaping features of the site are largely being maintained based on its current use as a private golf course, the Project Sponsor will be enhancing the Project Site with new landscaping berms, water features. Specifically, new landscaped areas including undulating berms with appropriate drainage improvements will be established to provide screening for the benefit of adjacent residential uses and also to screen vehicular parking areas. The Project Sponsor has designed the preliminary Landscape Plan to provide for variation in open space types that create both public

and private landscaped areas that can be enjoyed within the Westwood Neighborhood.

“(2) Landscaping Standards. Landscaping plans shall meet the following standards:

- (a) Landscaping shall provide privacy and screening between uses, with visual, noise and air quality factors considered.*
- (b) Landscaping shall contribute to prevention of water runoff and erosion problems. Temporary or permanent protection shall be provided during construction to prevent such problems.*
- (c) Landscape treatment for public and private plazas, roads, paths, service and parking areas shall be designed as an integral part of an entire project and shall combine with walks and street surfaces, and such requirements shall be in lieu of any other Town requirement for trees in public street rights of way.*
- (d) The area covered by impervious surfaces such as buildings and paved areas must be accompanied by planted areas as well as other features to hold or carry stormwater runoff. Outdoor planted or grassed areas within parking lots must be not less than five percent of the total vehicular area in parking lots designed for 10 cars or more and shall be suitably distributed so as to relieve any unsightliness and monotony of parked cars.*
- (e) Landscape materials shall be appropriate to the growing conditions on the site and the Town's environment.*
- (f) Natural features such as streams, rock outcrops, escarpments, marshlands, wetlands, topsoil, trees and shrubs, natural contours and outstanding vegetational, topographical and geological features are encouraged to be preserved and incorporated in the open space areas and in the landscaping of the development.*
- (g) Plastic or other types of artificial plantings or vegetation shall not be permitted. Trees shall be planted adjacent to all residential units so as to provide no less than three trees of a minimum two and one half inch caliper, measured six inches above the ground, per residential unit, including existing trees on the site which are preserved. Trees to be planted throughout the district and along the vehicular ways shall include both deciduous and coniferous species in adequate density and design to provide year round benefit of such plantings.*
- (h) Trees shall be of numerous species as to minimize the impact and spread of disease.*

Section VII of the “Westwood Design Standards” as attached as Exhibit “O” is titled “Landscape Strategy” and includes a complete description of the planning objectives for the implementation of an integrated landscaping plan for the mixed use project. The Project Sponsor utilized the services of Frank T. Brzezinski, Registered Landscape Architect, to carefully review the Town of Amherst Landscaping, Buffers and Screening Standards as contained within Section 7-2 of the Zoning Code to ensure compliance with the general design standards as well as the PUD landscaping standards in Section 6-9-3B(2) of the Zoning Code as cited above. Mr. Brzezinski evaluated landscaping species type, size, location, disease avoidance measures, and installation methods. The Landscape Plan incorporates stormwater management elements including sufficient areas for storage of runoff from impervious surfaces, designated permanent open space areas to provide pervious surfaces, and bio-retention systems that will treat runoff. In order to ensure stormwater runoff from new impervious surfaces is properly managed per the applicable stringent stormwater quantity and quality standards of the New York State Department of Environmental Conservation (“NYSDEC”), the project layout includes approximately 64 acres of permanent open space areas that will consist of pervious areas (approximately 38% of the Project Site). The dispersed permanent open space will assist in the management of stormwater runoff by creating areas that will be capable of handling stormwater runoff per the applicable requirements. The Landscape Plan was designed as an integral part of the Westwood Neighborhood and played an integral role in the layout, placement, and arrangement of buildings and related improvements depicted on the Conceptual Master Plan. The planning process stressed the importance of incorporating and maintaining existing environmental features and the development of a mixed-use neighborhood that actively embraces open spaces and publicly accessible recreational opportunities.

Section 6-9-3B(3) of the Zoning Code is titled “Aesthetics” and establishes development standards to ensure the projects subject to the PUD process will have a quality appearance in terms of buildings and other related improvements. Section 6-9-3B(3) states as follows:

“Aesthetics.

(a) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance and easily maintained.

(b) The sides and rear of all buildings shall be designed in such manner as to avoid undue sacrifice of amenity and design values when viewed from side and rear vantage points.”

The above cited standards require that construction materials are of a good appearance and easily maintained. In addition, the sides and rear of all buildings within a PUD shall be designed in such a manner as to avoid sacrificing building amenities and design values when viewed from side and rear vantage points. In order to accommodate these building standards, the Project Sponsor has included specific construction and building façade execution standards within the “Westwood Design Standards” attached as Exhibit “O” of this Rezoning Application. Section IV of the Westwood Design Standards is titled “Neighborhood Character” and provides a framework for design principles specific to each of the mixed use project components to be included in the Westwood Neighborhood. The standards are focused around providing high quality buildings that offer complete facades on all sides of new buildings. The elements of the Westwood neighborhood are designed to offer distinctive architectural environments that include thematic references to each other in order to provide a sense of place, continuity and community.

Section 6-9-3B(4) of the Zoning Code is titled “Screening” and establishes screening standards applicable to projects requiring PUD approval by stating as follows:

*“(4) **Screening.** Visual and noise screening devices shall be designed and maintained to serve their intended purposes set forth in this Section. Artificial planting materials shall not be allowed. Landscape screening should be given priority where effective, easily maintained and botanically feasible. Decorative masonry walls in conjunction with berms and plant materials are encouraged.”*

The above cited PUD development standard requires that projects subject to the PUD review process feature architectural and landscaping elements to screen potential visual and noise impacts. In consideration of this requirement, the Project Sponsor has designed the Westwood Neighborhood to include landscape buffering and screening to all parking areas within the Project Site. In addition, the physical layout of the buildings have been designed to provide for an engaging streetscape that accommodates the pedestrian experience, with the massing and facades of buildings providing screening for the parking areas behind them. Existing adjacent residential uses are screened from the scale of new buildings and vehicular parking areas through permanent open spaces buffer areas that will include berms and extensive landscaping.

C. Local Circulation System (Section 6-9-3C):

Section 6-9-3C of the Zoning Code is titled “Local Circulation System” and contains two subsections titled “Vehicular Circulation” and “Pedestrian Circulation”. Each of these subsections are reproduced in *italics* below and addressed as follows:

“Vehicular circulation.

- (a) The vehicular circulation system and parking facilities shall be designed to fully accommodate the automobile safely and efficiently without allowing it to dominate and destroy the form of the area, and with screening and buffering as may be required to satisfy the environmental standards of this Section.*
- (b) Dwellings and other buildings shall be served by streets, drives or emergency accessways planned to assure access by service and emergency vehicles.*

- (c) Driveways and streets serving group and cluster developments shall be connected to collector and arterial streets at locations where traffic can be controlled and operated effectively and safely with minimum interference to the capacity of the arterial and collector streets, bicycle routes and pedestrian ways.*
- (d) Streets may be either private or public.*
- (e) Standards of design and construction for all roads to be dedicated shall meet applicable town standards unless specifically modified as part of the site plan approval. The right of way and pavement widths, locations and designs for private ways, roads and alleys shall conform to generally accepted planning and engineering practices, taking into account the estimated needs of the full proposed development.*
- (f) There shall be provision of safe bicycling routes throughout the district which may be coincident with pedestrian ways but which shall be separated from the motorized vehicle system wherever feasible.”*

The Westwood Design Standards attached as Exhibit “O” of this Rezoning Application includes vehicular circulation objectives for the mixed-use project. Section VI of the Westwood Design Standards is titled “Circulation” and it describes the Vehicular Circulation objectives utilized in designing the mixed use project. The “Neighborhood Character” Framework map provided in Section III of the Westwood Design Standards depicts the roadway network, bike path route and connection as well as the pedestrian access points for the mixed use project. This map demonstrates that a key planning objective of the mixed-use project are to integrate the mixed use components and to provide direct non-vehicular access points for existing residents in the surrounding vicinity.

The Westwood Neighborhood has been designed with a priority on providing a connected, contiguous road network. The Westwood Neighborhood has been designed to establish a clear hierarchy in terms of street patterns and the primary public roadway will be a spine road that extends through the center of the Project Site from Maple Road to Sheridan Drive. The spine road has been designed to include medians throughout and a traffic circle to

safely manage vehicular speed and the integration of pedestrian and bicycle networks. Intersections with the internal roadways of individual mixed-use project components along the spine road have been evenly placed to create an orderly and safe line of sight for vehicular users, limiting the potential for conflict points.

While vehicular travel is managed in a safe manner with sufficient capacity for anticipated vehicular traffic to be generated by the mixed-use project, the road network has deliberately been designed to ensure it will not dominate the landscape. Instead, streets have been designed with landscaping and spacing to create an aesthetically pleasing vehicular network.

The layout for the mixed-use project as depicted on the Conceptual Master Plan reflects a concerted effort to incorporate safe bicycling routes on the Project Site as required by Section 6-9-3C(1)(f) of the Zoning Code cited above. In an effort to avoid conflict points with vehicular traffic, the circulation plan includes bicycle lane crossings at the primary intersection with the spine road and a key component of the Westwood Neighborhood is the complete and separate bike path and trail system that extends throughout the Project Site and provides access to all of mixed use components.

“Pedestrian Circulation.”

- (a) Pedestrian ways shall connect residential areas with other residential areas, community facilities, schools, recreational areas, commercial areas and public transportation.*
- (b) The system of pedestrian walks, malls and landscaped spaces shall be of such extent and the elements of such system shall be so distributed in location and number so as to assure safety of pedestrians from vehicular traffic and encourage pedestrian travel within such system instead of in vehicular rights of way, without restraints imposed by public, private or common ownerships.*
- (c) Major pedestrian walks, malls and public transportation loading places where feasible shall be separated from general vehicle circulation.*

(d) Landscaped, paved and comfortably graded pedestrian walks shall be provided, particularly from building entrances to adjacent buildings, play areas, parking areas and streets.

(e) Sidewalks, pathways and bikeways to be located within a public right of way shall meet town standards as to width, location and materials unless specifically modified as a part of the site plan approval.

The Westwood Neighborhood has been designed in accordance with the Traditional Neighborhood Development District regulations (“TND”) contained in Section 5-6 of the Zoning Code. As per the purpose and intent section of the TND regulations, development in the TND District is intended to encourage walking, biking, and use of public transportation as alternatives to automobile trips. The Project Sponsor carefully considered the layout, design, and circulation of the site to ensure pedestrians will have a safe, inviting, and engaging experience within the Westwood Neighborhood. The pedestrian network includes both sidewalks and trail networks that are interconnected and accessible by all of the mixed use components of the project. The network is extended to connect all the single-family residential, multi-family, medical and professional office park, senior living, and neighborhood center on the Project Site. Furthermore, the paths are also directly connected to and extended throughout permanent open space areas including the approximately 23 acre Westwood Park.

In an effort to ensure the sidewalks, open space areas, and trail networks are publicly accessible, the Project Sponsor has ensured all sidewalks and paths are located either within public right-of-ways or within common areas. Safe and efficient means of pedestrian travel between buildings and within parking areas have been included and coordinated within the design of the site Landscape Plan. Please refer to Section VI. Circulation of the Westwood Design Standards Guide for a full description of the circulation strategy as well as a cross-section of the street design including an assessment of vehicular paths, on-street parking, pedestrian

pathways and median design.

Section 6-9-3C of the Zoning Code provides for circulations systems that allow for the safe and efficient movement of vehicular, bicycle, and pedestrian users within new developments. New development should be designed to accommodate multi-modal transportation options that do not place a priority on private vehicular traffic while neglecting pedestrian and public transit options. Most importantly, projects should provide a distinction between surface materials and visual effect that provide for easily discernible and safe paths that are intended for differing users whether vehicular, pedestrian, or bicycle. In an effort to satisfy this critical concern within the Westwood neighborhood, the Project Sponsor utilized the services of Goody Clancy, a nationally recognized architecture, planning, and preservation firm with a core focus and proven success in developing lively mixed-use neighborhood centers, to develop the Westwood neighborhood streets, sidewalk, and path circulation and integration strategy. Please refer to Section III. Development Strategy of the Westwood Design Standards Guide (attached to this Application as Exhibit “O”) which includes a “Neighborhood Character” map that depicts the path routes and connection points within the neighborhood. Further details regarding the site circulation strategy can be found within Section VI. Circulation of the Westwood Design Standards Guide (attached to this Application as Exhibit “O”).

D. Topography and Site Appearance (Section 6-9-3D):

Section 6-9-3D of the Zoning Code is titled “Topography and Site Appearance” and is reproduced in *italics* below and addressed as follows:

“Topography and Site Appearance. PUD's shall be designed to take advantage of the topography of the land in order to utilize the natural contours, to provide for water storage and control of water runoff, to protect natural drainage courses, to economize in the construction of utilities, to reduce the amount of grading and to maximize the conservation of trees and topsoil. Significant natural features and other characteristics of the site shall be preserved and incorporated as distinctive features of the development.”

Section 6-9-3D of the Zoning Code as cited above requires that projects subject to the PUD review process be designed to take advantage of the topography of the land in order to utilize the natural contours, to provide for water storage and control of water runoff, to protect natural drainage courses, to economize in the construction of utilities, to reduce the amount of grading and to maximize the conservation of trees and topsoil. The Westwood Project Site as it currently exists is relatively flat and Ellicott Creek is a significant environmental feature located along portions of the eastern boundary of the Project Site. The Project Sponsor has carefully designed the Westwood Neighborhood to maintain existing areas of natural tree cover and the Ellicott Creek corridor. The Project Sponsor utilized the services of Professional Civil Engineering, LLC to develop a Preliminary Stormwater Management Plan and Drainage Analysis Report. The Conceptual Master Plan was specifically designed to work in unison with the existing site topography and includes the establishment of a primary stormwater detention lake in the center of the Project Site, as the overall topography is generally flat with a slight pitch towards the center of the Project Site. The overall stormwater management plan and analysis includes specific calculations and findings that indicate the current plan will provide for sufficient storage of stormwater as per the stringent stormwater quantity and quality standards of the New York State Department of Environmental Conservation (“NYSDEC”) as well as the Town’s drainage standards. The fully engineered plans for mixed use components that will require site plan approvals will include detailed drainage calculations to ensure compliance with

the applicable stringent standards for stormwater management.

E. Open Space (Section 6-9-3D):

Section 6-9-3D of the Zoning Code is titled “Open Space” and contains detailed performance standards to ensure that PUD projects involve the preservation of substantial areas as permanent open space as part of the overall PUD planning objective of requiring high quality development projects. Section 6-9-3D of the Zoning Code contains seven subsections titled “Definition”, “Scale and Character”, “Area and location”, “Open Space Alterations”, “Physical Improvements”, “Public Open Space” and “Perimeter Treatment”. Each of these subsections are reproduced in *italics* below and addressed as follows:

“(1) Definition.

- (a) Open space includes:*
 - (i) Uncovered and unpaved lands or water areas in public, common or private ownership, except lots under single family ownership;*
 - (ii) Lands covered by structures or other improvements may also be deemed to constitute open space under the limited conditions specified in this Section;*
 - (iii) Large areas of land in a natural state;*
 - (iv) Areas for active and passive recreation;*
 - (v) Parks and large landscaped or wooded areas;*
 - (vi) Drainage, runoff areas and flood plain areas and areas for stormwater storage and protection of water quality;*
 - (vii) Connectors between major open space areas;*
 - (viii) Pedestrian and bicycle circulation systems;*
 - (ix) Areas for preservation of wildlife, woodlands, wetlands and outstanding natural features, including geologic and topographic;*

- (x) *Areas for public or private recreation, public education, community and cultural facilities when approved by the Town Board;*
- (xi) *Conservation facilities and areas.*”

The above quoted definition of “open space” is broad and reflects an effort to provide for diversity in terms of recreational opportunities and varying aesthetic value in open space areas. In recognition of the broad definition of “open space” the Project Sponsor has included a wide range of permanent open space areas as depicted on the Conceptual Master Plan including an approximately 6.5 acre lake that will be used for stormwater management and as an aesthetic and recreational feature; multiple smaller stormwater detention ponds; large natural land areas; and the approximately 39 acre Westwood Park that includes significant mature woodlands, connecting trails through major open space areas, pedestrian and bicycle circulation systems, preservation of the jurisdictional wetlands associated with the Ellicott Creek corridor, and the creation of new wetland areas.

*“(2) **Scale and Character.** Such proposed uses must be appropriate to the scale and character of the new district, considering its size, density, expected population, topography and the number and types of dwelling units.”*

Section 6-9-3E(2) of the Zoning Code indicates that open space requirements are not fulfilled by simply allocating acreage for permanent open space and that it is important for open space features to be an integral element of a PUD project. The intent of Section 6-9-3E(2) of the Zoning Code is to ensure that open spaces are sufficient in terms of size and access to allow for a healthy and engaging environment for residents and visitors of the development.

The Project Sponsor utilized the services of Goody Clancy, a nationally recognized planning and site design firm, to carefully “right-size” the open space areas in

relationship to the mixed-use project components they will serve. This process involved an analysis and comparison to other successful open space models throughout the country. Open space character was another critical consideration. The Westwood neighborhood includes multiple types of open space areas that are intentionally varied in terms of function and purpose relative to the development types they serve. This arrangement provides residents and visitors with diversity in terms of recreational modes and options throughout the Project Site.

The Project Sponsor has carefully designed the Westwood neighborhood to incorporate open spaces that will facilitate healthy, active lifestyles and socialization within great public spaces. The permanent open space areas have been designed as large recreational areas in the context of a natural space such as Westwood Park; as smaller green spaces for public gathering such as the Focal Green; and as small pockets of social engagement space within an activity center such as the Westwood neighborhood plaza.

“(3) Area and location.

(a) In any PUD a minimum of 25 percent of the total land area, less the amount used exclusively for nonresidential purposes, must be in open space.

(i) At least 70 percent of this total open space shall be in private ownership open to the public or in public or common ownership.

(ii) Any part of the total open space, either in a natural state or improved as permitted by and meeting the standards of this Section, may be offered for dedication or other disposition without cost to the Town or other public entity for recreation and other open space uses for use by the public and acceptable to the Town Board and other public entity and to the owner and if accepted constitutes a credit to paragraph (a) above. Offers for dedication or other disposition of major open space for public use may be made at any time after approval of the development plan.

(b) Any public or common open space shall be located and organized to be readily accessible by foot and bicycle to residential populations served thereby (preferably without their having to cross limited access and arterial roadways). In addition, access and parking for vehicles shall be provided

where appropriate.

(c) The location, condition, size and configuration of the open space must be suitable for its use as proposed in the development plan and/or site plan. Lakes or other water areas may not occupy so large a proportion of the major common open space that other open space and recreational uses cannot be adequately provided for.”

Section 6-9-3E(3) of the Zoning Code as quoted above requires that open space comprise a minimum of 25 percent of the total land area of any new development, less the amount used exclusively for nonresidential purposes. In an effort to sustain the existing natural features and ensure that substantial open space areas will be readily accessible and dispersed throughout the Project Site, the Project Sponsor has intentionally exceeded the minimum 25 percent open space requirement by proposing mixed-use layout providing approximately 81 acres of permanent open space, representing 47 percent of the Project Site. This represents a commitment on the part of the Project Sponsor to provide 88 percent percent more open space areas than required.

In terms of accessibility, the permanent open space areas are dispersed throughout the Project Site and connected by an active bike path and trail system. All components of the mixed-use project will have access to the common trail system, meaning all residents and visitors can readily engage the Project Site via pedestrian and bicycle travel.

*“(4) **Open Space Alterations.** The continued use of common open space for the purposes contemplated in this Section shall be assured through appropriate deed restrictions which shall include a provision that such open space use shall not be materially altered or abridged without the approval of the Town Board.”*

The Project Sponsor is willing to ensure the proposed open space remains open space on a permanent basis by recording a Declaration of Restrictions at the Erie County Clerk’s Office. The content and form of the Declaration of Restrictions for the permanent open space will be submitted to the Town Attorney’s Office for review and approval prior to recording at Erie

County Clerk's Office.

“(5) Physical Improvements.

- (a) Open space must be suitably improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved.*
- (b) The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for the common open space and must conserve and enhance the amenities of the common open space with regard to its topography and unimproved condition.”*

Section 6-9-3E(5) of the Zoning Code as quoted above encourages PUD project layouts in which permanent open space areas containing significant natural features worthy of preservation be left unimproved. In an effort to incorporate and preserve existing natural features into the Westwood Neighborhood, the Project Sponsor has intentionally designed the Project around existing woodland areas and the Ellicott Creek corridor. Furthermore, the physical improvements and buildings within the Westwood Neighborhood have been intentionally positioned to take advantage of the existing natural scenic landscapes to be preserved as well as the new landscaping. The Project Sponsor is not proposing any new commercial or residential buildings in the permanent open space areas to be provided on the Project Site.

“(6) Public Open Space. The standards for the Planning Board's determination whether to recommend Town Board approval of an offer for the dedication or other disposition to the Town or other public entity of public open space lands shall, without excluding any other applicable requirements of this Section, include the following:

- (a) The need for public open space in the PUD. In determining the manner of public ownership, the usage by the Town's population outside the PUD shall be considered.*
- (b) The potential for an open space connection with other public open space*

areas.

- (c) *The desirability of public access due to the special physical and biological characteristics of the area which make it suitable for public open space uses.*
- (d) *The desirability of public acquisition of floodways, drainageways and areas subject to flooding for water management and recreational uses.*
- (e) *Review and acceptability of covenants or similar provisions proposed for inclusion in dedication instrument, intended to assure that public use remains consistent with the objectives of the development plan and site plan.”*

Section 6-9-3E(6) of the Zoning Code as quoted above includes specific criteria for the Planning Board to consider in evaluating whether to recommend that the Town Board consider an offer for the dedication or disposition to the Town or any other public entity of “public open space lands” within a proposed PUD project. The Project Sponsor is willing to discuss the possible dedication of the Westwood Park area to the Town and other publicly accessible open space areas with the Planning Department, Planning Board and Town Board in connection with the review of the proposed mixed-use project.

*“(7) **Perimeter Treatment.** The design of improvements and landscaping along the boundaries of a PUD should be visually harmonious and functionally compatible with adjoining development. Extensive parking areas, service areas and other features likely to have adverse effects on surrounding property (due, e.g., to adverse views, lights, noise) shall be screened against viewing from first stories both inside and outside the district. Screening shall also be provided to protect against lights, noise or other undesirable conditions in the surroundings.”*

Section 6-9-3E(7) of the Zoning Code as quoted above requires that improvements and landscaping along the boundaries of a PUD development be harmonious and functionally compatible with adjoining development. The design of the mixed-use project as depicted on the Conceptual Master Plan was prepared based on a recognition of the need for the project to be compatible with the existing land uses in the immediate vicinity of the Project Site including the

Fairway neighborhood directly west of the Project Site. Section 6-9-3E(7) of the Zoning Code also states that extensive parking fields and lighting shall be screened to protect adjacent residents from light, noise or other undesirable conditions.

The Project Sponsor utilized the services of Wendel Companies to develop a Conceptual Master Plan that includes the implementation of undulating berms around the perimeter of the Project Site in the proposed permanent open space areas to ensure proper screening and buffering to adjacent residents including the Fairways neighborhood directly west of the Project Site. The specific design for the landscaping and screening in the permanent open space areas along the perimeters of the Project Site including conceptual berm cross sections is provided in Section VII of the Westwood Design Standards attached as Exhibit “O” of this Rezoning Application.

In an effort to avoid lighting spillover from the mixed-use project onto nearby residential parcels, the lighting for the Westwood Neighborhood will be designed according to the Town of Amherst’s stringent lighting standards contained in Section 7-3 of the Zoning Code for residential, multifamily and nonresidential buildings to provide safe, convenient, and efficient lighting for pedestrians and vehicles. Section VIII of the Westwood Design Standards is titled “Lighting” and contains guidelines for both sight and building lighting to ensure lighting improvements do not have adverse impacts on existing nearby residential uses and also to ensure the lighting is consistent with the high quality design for the mixed-use project.

Lighting will be designed in a consistent and coordinated manner for the entire Project Site. The lighting and lighting fixtures will be designed to enhance the visual impact of the Project on the community and blend into the surrounding landscape. Lighting fixtures will be designed, sized and located in such a manner to not cast direct rays of light upon adjoining premises or cause glare hazardous to pedestrians or persons using adjacent public streets.

F. Utilities (Section 6-9-3F):

Section 6-9-3F of the Zoning Code establishes a standard for utilities improvements for PUD projects by stating:

“F. Utilities: In association with PUD design standards, the Project Sponsor will ensure that all utilities will be generally placed underground.”

All utility improvements to be installed in connection with the mixed-use project including electric lines will be installed underground.

G. Signs (Section 6-9-3G):

Section 6-9-3G of the Zoning Code establishes criteria for signage to be installed in connection with a PUD project and states as follows:

“G. Signs.

- (1) Freestanding signs in a PUD shall be limited to traffic and pedestrian directional and control signs, street signs and signs identifying the development.*
- (2) Pole signs shall be prohibited in a PUD.*
- (3) One identification sign shall be permitted for each nonresidential use, identifying use on the premises as permitted on the site plan, of not more than 20 square feet, not projecting beyond the building to which it is attached more than 12 inches, not projecting more than 10 feet in height above grade. Signs shall be designed as an integral part of a Coordinated Sign Plan in accordance with § 8-11.*
- (4) Any illuminated sign visible from any public street or from adjoining property used for residential purposes shall be so shaded, shielded, directed or maintained at a sufficiently low level of intensity and brightness that it shall not adversely affect neighboring premises nor the safe vision of operators of vehicles moving on public roads or highways.*

Section 6-9-3G of the Zoning Code includes specific standards for the placement, type, construction, and number of signs within a PUD development. In addition, the Project Sponsor

will be subject to the regulations as stated within Section 7-8 Signs of the Zoning Ordinance. The Project Sponsor has included specific consideration for site signage within Section IX of the Westwood Design Standards attached as Exhibit “O” of the Rezoning Application.

As Section IV(G) of this Exhibit “M” identifies, there are specific standards for signs in a PUD project. The Project Sponsor will not be installing any pole signage per Section 6-9-3G(2) of the Zoning Code. However, the Project Sponsor anticipates that the Coordinated Sign Plan for the mixed use project may require some deviations from the standards in Section 6-9-3G of the Zoning Code. The Coordinated Sign Plan for the Project will be prepared based on discussions with the Planning and Building Departments.

V. Proposed Planned Unit Development Underlying Zoning District Amendments:

The PUD process is designed to permit coordinated developments that allow flexibility to respond to market demands and the needs of tenants with new development projects. PUDs are a nationally recognized land use tool typically associated with “mixed-use residential development of single-family dwellings in conjunction with rental, condominium, cooperative or town house properties.”⁶ It is important to recognize the intent of PUD regulations as a tool to develop large, integrated developments that adhere to a comprehensive plan and advance a number of important smart growth and sustainability objectives. The American Planning Association (“APA”) is an independent, not-for-profit educational organization that provides guidance in the development of communities and is nationally recognized as a leader in furthering the practice and policies related to urban planning. The APA regularly issues briefs and papers regarding current issues related to land use planning and decision making. In particular, the APA has noted that when

⁶ Source: United States Department of Housing and Urban Development, Housing Handbooks- Valuation for Single Family One – to Four- Unit Dwellings (4150.2) (July 1, 1999).

considering PUD developments communities may either limit the gross density of the tract to what would be permitted under conventional zoning, or may choose to allow more units than would otherwise be allowed. The benefits of concentrated higher density development include the ability to require a greater percentage of the tract as common open space. Properly applied, PUD is capable of mixing residential and nonresidential land uses, providing broader housing choices, allowing more compact development, permanently preserving common open space, reducing vehicle trips, and providing pedestrian and bicycle facilities. In exchange for design flexibility, developers are better able to provide amenities and infrastructure improvements, as well as accommodate environmental and scenic attributes.

A. Town Board Discretionary Authority: In an effort to accomplish the smart growth and sustainability objectives contained in Section 6-9 of the Zoning Code, the language contained in Section 6-9-2A recognizes the need for each PUD project to be reviewed on its merits and that there will be a need for flexibility in applying standards in the Zoning Code. Section 6-9-2A of the Zoning Code includes language stating, “Conditions placed on individual use areas of a PUD shall supersede regulations elsewhere in this Ordinance, unless otherwise noted.”

In addition to clearly noting the discretionary approval authority of the Town Board to supersede underlying zoning regulations in the review of a PUD development, PUD review process prescribes a specific manner by which conditions and/or adjustments to underlying zoning regulations shall be noted and enforced. Specifically, Section 8-4(F) of the Zoning Code states as follows: “The determination by the Town Board of whether to approve rezoning to a planned district or a PUD application to adjust any regulations, standards or criteria of this Ordinance shall be based on its review of the proposed conceptual development plan, the report

of the Planning Board and the Planning Director and any matter brought forth at the hearing and approval or rejection of a development plan where the Town Board has acted on its own initiative. Such approval shall include the making of the findings.”

B. Proposed Westwood Neighborhood Underlying Zoning District Amendments: As per the definition and objective of PUD legislation both nationally and locally, it is in some instances necessary to amend or supersede the regulations and provisions of underlying zoning regulations when attempting to effectively permit a PUD. When considering the Westwood Neighborhood in particular, the Project Sponsor has proposed a mixed-use neighborhood that efficiently concentrates living spaces and associated services within a vibrant and sustainable Neighborhood Center while additionally providing for substantial amounts of permanent open space and publicly accessible recreational opportunities. Toward that end, and in an effort to ensure the broader vision of the Westwood PUD is realized, the Project Sponsor is respectfully requesting the consideration of the Town Board for a limited number of PUD amendments to the requested underlying zoning designations. The following is a description of the necessary amendments by zoning classification to facilitate the Westwood neighborhood design objectives.

(1) Traditional Neighborhood Development District (TND): Neighborhood centers positioned within PUD’s rely upon being within close proximity of high density residential development to support a local market within the spirit of a walkable and pedestrian accessible district. Additionally, successful neighborhood centers include diversified housing options that allow for variation in terms of residents, households, and visitors that support a mix of commercial development.

Section 5-6 of the Zoning Code limits the density of attached dwelling units in the Traditional Neighborhood Development District (“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. The limit of four (4) unit attached dwellings in a residential building on property zoned TND seems to contradict one of the primary objectives of the TND purpose statement design principles, “Uses and housing types are mixed or in close proximity to one another.”⁷ By placing a restriction of no more than four (4) units per attached dwelling units per building, the Project Sponsor will be limited in the ability to provide for mixed housing types in close proximity to the Neighborhood Center. Based on the objective of the Westwood PUD and TND zoning purpose statement, the Project Sponsor is respectfully requesting the discretionary authority of the Town Board in approving a PUD application that provides for a unit density greater than four (4) per attached dwelling on the portion of the Project Site to be rezoned to TND to accommodate the proposed mixed-use project.

(2) General Business District (GB): The Project Sponsor has planned the Westwood Project to include a four-story hotel at the core of the Neighborhood Center. The four-story hotel is a critical component of the project that will be synergistic with the neighborhood businesses and offices that will be located in the center of the Neighborhood Center. As per 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 Project Sponsor is requesting the consideration of General Business District (“GB”) zoning classification for a small area within the core of the Neighborhood Center. Specifically, the GB zoned property would be limited to approximately 1.16 acres. The

⁷ See Section 5-6-1(B) of the Zoning Code.

Project Sponsor firmly believes that the inclusion of GB zoning for a small portion of the Neighborhood Center would not impede the overall intent and objective of the TND. In fact, one of the primary objectives of the TND Purpose Statement (Section 5-6-1 of the Zoning Ordinance) is to ensure “density is highest in the center of the district and decreases with distance from the center.” Positioning a focused area of GB zoning accomplishes this TND design principle by facilitating highest density development on a limited portion of land area (approximately 1.16 acres) at the core of the Neighborhood Center. Furthermore, the GB zoning regulations also support this effort by identifying the following as the GB Purpose Statement (Section 4-4-1 of the Zoning Ordinance), “to provide community centers within existing and proposed commercial nodes and mixed use activity centers for the location of commercial uses which server a larger market area than a neighborhood center, as articulated in the comprehensive plan, and provide for community-wide needs for general good and services and comparison shopping.” The Project Sponsor is looking to meet the objectives of both the TND zoning classification and GB zoning classification by positioning a concentrated pocket of GB zoning within the Westwood neighborhood center.

The challenge in this approach is presented by the underlying setback requirements for property zoned GB. Section 4-4-2(B) of the Zoning Code identifies dimensional and setback standards and for principal and accessory uses on GB zoned property. As a principal use structure, the proposed four-story hotel within the Westwood Neighborhood Center would 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 Project Sponsor to develop the Westwood neighborhood as 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 project intent and PUD objective. By comparison, as per Section 5-6-2 (B) of the Zoning Ordinance, 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 approach to Neighborhood Center at the site, the GB setbacks would detract from the project intent. Therefore, the Project Sponsor is respectfully requesting the discretionary authority of the Town Board in approving a PUD application that provides for the application of TND zoning setbacks for the approximately 1.16 acre site for the proposed four-story hotel.