

TOWN OF YORKTOWN  
STATE OF NEW YORK

-----X

In the Matter of the Application of

**KITCHAWAN BARNS, LLC**

**PETITION**

For an Amendment to Chapter 300 of the Town of Yorktown Code (the "Zoning Code") to amend the Schedule of Regulations for the Transitional Zone ("T District") bulk and area regulations for the Premises known as 712 Kitchawan Road, designated on the Tax Assessment Map of the Town of Yorktown as Section 70.06, Block 1, Lot 4, in furtherance of the proposed addition to existing office and flex space on the Premises.

-----X

TO THE HONORABLE SUPERVISOR AND MEMBERS OF THE TOWN BOARD OF THE TOWN OF YORKTOWN:

The Petitioner, KITCHAWAN BARNS, LLC ("Petitioner"), by its attorney, Taylor M. Palmer, Esq., of Cuddy & Feder LLP, 445 Hamilton Avenue, 14<sup>th</sup> Floor, White Plains, New York, as and for its Petition to amend the Schedule of Regulations for the Transitional Zone bulk and area regulations for the Premises in furtherance of the proposed addition to the existing office and flex space pursuant to Zoning Code Section 300-206 and the procedures provided in Zoning Code Section 300-169, respectfully alleges and states the following:

**A. EXECUTIVE SUMMARY**

1. This Petition seeks to amend the Schedule of Regulations for the T District bulk and area regulations for the Premises in order to construct a refined minor addition to the existing office and flex space building on the Premises for continued utilization by Tracer's digital printing, cutting and laminating business.

2. The Premises is the site of the former Brooklyn Botanic Garden Corporation property (also formerly known as The Kitchawan Institute), which is currently improved by an existing one-story office building that has been used for office and research laboratory uses since the 1950's. This Petition seeks to amend the Schedule of Regulations for the T District bulk and area regulations approved for the Premises in 2017 in order to construct the limited addition generally in the footprint of the prior storage building/greenhouse foundation.

3. The 14.7-acre Premises is located at 712 Kitchawan Road (N.Y.S. Route 134) and is presently classified in the T District in the Town of Yorktown pursuant to the approvals granted by the Town Board in 2017.

4. The Petitioner will maintain the existing building on the Premises and utilize existing parking areas, with proposed improvements generally limited to the minor addition to the existing office and flex space. Notably, an addition to the office and flex space was previously approved in connection with the Petitioner's application for site plan approval for the Premises that was granted in 2017. The proposed addition reflects *de minimis* changes to that previously approved addition, which will better serve Tracer's on-site needs and maximize the efficiency of the space for the existing office and flex space use.

5. There will be minimal visual impacts from Kitchawan Road. The Premises is already improved by the existing office and flex space building and parking areas, as well as by the landscaped screening that was previously installed by the Petitioner. The proposal preserves the open space on the Premises, including existing restricted buffer areas to the adjoining property to the north and east (the Kitchawan Preserve). The existing building is built into the hill on the

Premises and the updated and refined plans for the proposed addition are more consistent with the design and scale of the existing building, which ensures limited visibility to properties south and west of Kitchawan Road. Given the topography of the site, and the existing improvements and landscaping, the proposed addition to the existing office and flex space use of the Premises will be consistent with the surrounding area.

#### **B. DESCRIPTION OF PARTY AND SUBJECT PREMISES**

6. The Petitioner, KITCHAWAN BARNS, LLC, having an address at c/o Tracer Imaging, 712 Kitchawan Road, Ossining (Town of Yorktown), New York 10562, is the Owner of certain improved real property known and designated on the Tax Assessment Map of the Town of Yorktown as Section 70.06, Block 1, Lot 4 (the “Premises”) as reflected in the Deed from The Kenneth S. Warren Institute, Inc. to Kitchawan Barns, LLC dated May 29, 2018 and recorded in the Westchester County Clerk Land Records at Control Number 580923477, enclosed as **Exhibit D**. Aerial photographs and tax map images of the Premises are attached hereto as **Exhibit C**.

7. Since the 1950’s, the existing building on the Premises has been used for several uses, including research, laboratories, office space, educational, think-tank, seminars, meetings and other “related uses.” Brooklyn Botanic Garden Corporation acquired the Premises in the 1950s, and it is understood from prior submissions to the Town of Yorktown that the research laboratory use (and related uses) on the Premises pre-existed the zoning ordinance.<sup>1</sup>

---

<sup>1</sup> Enclosed as **Exhibit E**, please find a copy of a Letter from Gerald K. Geist, Esq., of Stern Keiser Panken & Wohl LLP to Michael J. Grace, Esq., of Grace & Grace, dated June 24, 1998, regarding the history of the Premises and existing non-conforming status of the Premises (hereinafter, the “Kitchawan Institute Letter”).

8. In 2017, the Town Board approved the Applicant's Verified Petition to remap the Premises into the T District on October 17, 2017 (the "Rezoning Approval") and granted site plan approval by Resolution dated November 15, 2017 (the "Site Plan Approval" and collectively referred to herein as the "2017 Approvals"). *See Exhibit A – Rezoning & Site Plan Approval Resolutions.*

9. Currently, the 14.7-acre Premises contains one (1) existing building, including the first (main) floor, and a partial basement and that existing building is comprised of office space and flex space, conference rooms and storage in furtherance of Tracer's digital printing, cutting and laminating business. Prior to the COVID-19 Pandemic, Tracer protected memories in the form of picture frames. At the onset of the COVID-19 Pandemic, Tracer shifted to protecting the people in those memories and in mid-March 2020 utilized the plastic sheets they were using in their photo frames to create face shields; immediately donating their inventory of 200,000 sheets to nursing homes, the State of New York and first responders including the Yorktown Police Department.

10. The Petitioner also made a significant investment renovating and significantly updating the existing office building. Additionally, the Petitioner improved the parking area that is utilized by the public accessing the recreational trails at the nearby Kitchawan Preserve. *See Exhibits B & C – Before & After Photos & Images of Premises and Parking Area.* The Premises are also improved by existing parking areas that served the prior office and related uses, located north and east of the existing building, with parking and loading available on the south side of the existing structure adjacent to the concrete foundation of the former greenhouse. A copy of the Survey of the Property entitled "Survey of Property Prepared for the SHM Acquisitions LLC",

prepared by Link Land Surveyors, P.C., last updated February 24, 2021, is attached hereto as **Exhibit F**.

11. The Premises is accessed by a twenty-two (22) foot wide right-of-way driveway easement over the adjacent property to the north (the "Access Easement"), which provides ingress to and egress from the Premises from Kitchawan Road. *See Exhibit F* – Easement Shown on Survey. This access easement historically served as the physical access point into the Premises, and the driveway also provides access for park users accessing the Kitchawan Preserve to the north of the Premises. The parking area for the Kitchawan Preserve is located along the first 100+/- feet of the Access Easement on Westchester County's property. As noted above, the Petitioner previously improved this parking area and maintain this Access Easement that is also used by parkgoers pursuant to its agreement with Westchester County.

12. The Petitioner proposes to proceed with the development of the proposed refined addition to the existing office and flex space along the south side of the existing building that was previously approved pursuant to the 2017 Approvals located generally in the footprint of the prior storage building/greenhouse foundation, which ruins are shown on the enclosed Site Plans (**Exhibit G**) and **Exhibit F**. However, in preparing to construct the proposed minor addition and based on Tracer's operations on the Premises, the Petitioner determined that the size of the structure was insufficient to achieve Tracer's needs. Accordingly, the Petitioner's Architect, Aryeh Siegel Architect, refined the building addition to better serve Tracer's on-site needs and to maximize the efficiency of the space for the existing office and flex space. *See Exhibit G* – Site Plans.

13. Accordingly, this proposal is to amend the Schedule of Regulations for the T District bulk and area regulations for the Premises in order to construct the limited refined addition to the existing office and flex space. The proposed office use remains consistent with the Town's Comprehensive Plan. (*See*, Section E below.)

### **C. CURRENT ZONING AND DEVELOPMENT**

14. The Premises is approximately 14.7 acres in size and is located north and east of Kitchawan Road (N.Y.S. Route 134). The Premises is generally bounded to the north and east by the 207+/- acre Kitchawan Preserve, and is located west of the New Croton Reservoir and the North County Trailway in the Town of Yorktown, Westchester County, New York. The closest adjacent use to the Premises is approximately 500+/- feet from the boundary of the Premises, while the property to the north and east of the existing buildings is vacant. *See Exhibit C – Aerials and Street Views of Premises.*

15. The Premises are presently zoned in Transitional Zone (“T” District) Zoning District in the Town of Yorktown. A copy of the 2017 Rezoning Approval is annexed hereto as **Exhibit A**, which demonstrates the district classification of the Premises. The Premises were previously classified in the R1-200 One-Family Residential Zoning District and in the “R-180,” and or the “R1-80” Zoning Districts in the Town. The same residential and related other uses were permitted in these districts. The metes and bounds description of the Premises is attached hereto as **Exhibit H**, as more particularly shown on the Survey (**Exhibit F**).

16. The Premises do not immediately abut any residential uses within the R1-200 District. The Premises are surrounded by properties which are effectively buffered, and the

Premises was reserved when the Kitchawan Preserve was transferred to the County, specifically to be used for office and related uses. The Petitioner is not proposing to change the permitted uses on the Premises.

17. The existing district classifications of properties contiguous or adjacent to the Premises, are as follows:

- A. *Northerly Boundary*: The property situated north and northeast of the Premises is classified in the R1-200 One-Family Residence Zoning District and consists of 207+/- acres of vacant property owned by Westchester County, known as the Kitchawan Preserve. The Kitchawan Preserve is accessed from the driveway to the Premises, and is comprised of vacant land and hiking trails.
- B. *Easterly Boundary*: The property situated to the east and southeast of the Premises is zoned in the R1-200 One-Family Residence Zoning District, and is comprised of the southern-most portion of the Kitchawan Preserve, which abuts the north side of Kitchawan Road, and the North County Trailway (Yorktown Heights Rail Trail). East of the Kitchawan Preserve generally consists of vacant land, including the New Croton Reservoir and electric power transmission lines.
- C. *Southerly Boundary*: The property to the southeast of the Premises is classified in the R1-200 Zoning District as described above. The southerly boundary of the Premises is Kitchawan Road, and property located south of Kitchawan Road is classified in the R1-80 One-Family Residential Zoning District with properties further south zoned in the R1-200 and the Country Commercial – CC Zoning Districts. The uses generally consist of residential uses and vacant property. The closest structure to the existing building on the Premises is located approximately 500+/- feet away.
- D. *Westerly Boundary*: The southerly boundary of the Premises is Kitchawan Road, and property located west of Kitchawan Road is classified in the R1-80 One-Family Residential Zoning District. The uses generally consist of residential, religious and horse farm uses and a commercial ornamental ground cover operation. Property west of the residential properties zoned R1-80 is zoned OB – Research Lab and Office District, improved by IBM.

18. The Rezoning Approval and Site Plan Approval provide a “Schedule of Regulations, Transitional Zone [ ] Bulk Regulations” (the “Schedule of Regulations”), which sets forth the area and bulk requirements for the Premises located in the T Zoning District. These bulk

and area standards were generally established based on the existing building conditions on the Premises and the previously proposed improvements that the Town Board reviewed and approved in connection with the 2017 Approvals. The current existing Schedule of Regulations for the Premises provides as follows:

**SCHEDULE OF REGULATIONS**

**TRANSITIONAL ZONE BULK REGULATIONS**

Lot Area	14.07 ac
Lot width at front yard	802.64 ft
Front yard	299.85 ft
Side yard	305.58 ft and 555.49 ft;
Rear yard	179.67 ft
Maximum height	35 ft main building 20 ft accessory building
Maximum coverage	13,987 sq ft (2.2%)
Off street parking	Office: 43 parking spaces existing to remain

**D. PETITION**

19. The herein petitioned amendment to the Town’s T District Zoning Code Schedule of Regulations is requested in order to accommodate the minor changes to the proposed addition that was previously approved by the 2017 Approvals.



20. The Petitioner is requesting that the Schedule of Regulations of the T Zoning District for the Premises be amended as reflected on the Site Plans attached hereto in **Exhibit G**, and as provided in the Proposed Schedule of Regulations included herein below for the one side yard setback, the rear setback and the maximum coverage (the “Proposed Zoning Amendment”):

**SCHEDULE OF REGULATIONS**

**PROPOSED TRANSITIONAL ZONE BULK REGULATIONS**

Lot Area	14.07 ac
Lot width at front yard	802.64 ft
Front yard	299.85 ft
Side yard	295.22 ft and 555.49 ft
Rear yard	160.03 ft
Maximum height	35 ft main building 20 ft accessory building
Maximum coverage	15,112 sq ft (2.4%)
Off street parking	Office: 43 parking spaces existing to remain

21. Amending the Zoning Code and the Schedule of Regulations for the T District for the Premises is consistent with the intent of the Comprehensive Plan and intent and purpose of the Transitional Zone and does not pose any risk of detriment to the public health, safety and welfare.

22. The Proposed Zoning Amendment would allow for the development of the proposed minor addition to the existing office and flex space on the Premises.

23. Given the historic use of the Premises, the Proposed Zoning Amendment will enable Petitioner to continue to productively use and occupy the Premises in a manner consistent with the existing use office and flex space use of the Premises and the surrounding properties.

24. The metes and bounds description of the Premises is attached hereto as **Exhibit H**, as more particularly shown on the Survey (**Exhibit F**).

25. The Petitioner's Premises has been used for office uses for a century, and this Proposed Zoning Amendment will allow the use to continue, with the office on the tax rolls, which remains a logical transition for the Premises.

26. Petitioner's office and flex space use of the Premises contributes positively to the Town and School tax base without utilizing school district resources like potential residential development could.

#### **E. COMPREHENSIVE PLAN**

27. The Town of Yorktown Comprehensive Plan, adopted June 15, 2010, does not specifically address the Premises, but it does have a focus on retaining businesses in the community and encouraging appropriate residential-to-office conversions, while citing the Westchester County Economic Development Plan and Marketing Strategy. Indeed, one of the specific goals in the Comprehensive Plan is to “[s]trive for tax and fiscal stability for Yorktown residents by continuing to seek out stable, low-impact, high-quality ratables.”<sup>2</sup> The Petitioner proposes to

---

<sup>2</sup> TOWN OF YORKTOWN COMPREHENSIVE PLAN, Section 4-2, Goal 4-C.

continue to operate and expand Tracer's office and flex space uses consistent with the 2017 Approvals.

28. Further, the Comprehensive Plan recognizes the importance of economic development to promote a "vibrant economy that provides abundant job opportunities and contributes to and improved and fair local tax base."<sup>3</sup> The Petitioner is committed to the local community, and much like the Comprehensive Plan, recognize that "Westchester still remains an attractive destination for corporate offices because the main factors influencing corporate office location include: (1) proximity to a well-educated workforce; (2) proximity to the CEO's primary residence; (3) proximity to a major metropolitan center, where financial services, media outlets, and/or the company headquarters are located; and (4) good highway access, preferably near an interchange."<sup>4</sup> Additionally, the Comprehensive Plan calls for targeted business recruitment, and that "Towns and the County should actively recruit businesses from areas where they are starting up."<sup>5</sup> It is respectfully submitted that the Proposed Zoning Amendment is consistent with the Comprehensive Plan.

#### **F. SEQR COMPLIANCE – ENVIRONMENTAL REVIEW:**

29. A Short Environmental Assessment Form ("EAF") is annexed hereto as **Exhibit I**, which outlines the relevant information regarding the potential environmental impacts associated with this request to rezone the Premises. It is respectfully submitted that the proposed minor

---

<sup>3</sup> TOWN OF YORKTOWN COMPREHENSIVE PLAN, Section 4-1.

<sup>4</sup> TOWN OF YORKTOWN COMPREHENSIVE PLAN, citing the Westchester County Economic Development Plan and Marketing Strategy.

<sup>5</sup> TOWN OF YORKTOWN COMPREHENSIVE PLAN, Section 4-39 – Economic Development & Hamlet Business Centers.

addition on its own would constitute a Type II Action that would be exempt from SEQR Review,<sup>6</sup> and further that the Proposed Zoning Amendment will have no potentially significant environmental impacts. The Proposed Zoning Amendment and minor site plan amendment constitute an Unlisted Action for purpose of the State Environmental Quality Review Act (“SEQRA”) because of the Proposed Zoning Amendment.

30. Petitioner respectfully submit that a Negative Declaration would be appropriate for adoption by the Town Board as part of approving the Proposed Zoning Amendment for the Premises proposed by Petitioner and that no environmental impact statement is needed under SEQRA prior to such action. A Negative Declaration was previously adopted by the Town Board in connection with the 2017 Approvals, dated October 17, 2017.

#### **G. DOCUMENTATION IN SUPPORT OF PETITION:**

Included with this Petition are the following documents:

- Exhibit A:** Prior Town Board Approvals;
1. Rezoning Approval Resolution;
  2. Site Plan Approval Resolution; and
  3. Approved Site Plan Set, Consisting of three (3) Sheets.
- Exhibit B:** Before & After Photographs of Building Renovation for Tracer Offices;
- Exhibit C:** Images of Premises;
- Exhibit D:** Copy of the Deed;
- Exhibit E:** Letter from Gerald K. Geist, Esq., of Stern Keiser Panken & Wohl LLP to Michael J. Grace, Esq., of Grace & Grace, dated June 24, 1998;
- Exhibit F:** Survey of the Premises;

---

<sup>6</sup> See 6 N.Y.C.R.R. Part 617.5(c)(9).

- Exhibit G:** Site Plans Consisting of Five (5) Sheets Showing Proposed Refined Addition and Proposed Erosion and Sediment Control Measures;
- Exhibit H:** Metes and Bounds Description of Premises;
- Exhibit I:** Short Environmental Assessment Form in compliance with Article 8 of the New York State Environmental Conservation Law and the rules and regulations promulgated thereunder at 6 N.Y.C.R.R. Part 617 (collectively SEQRA”);
- Exhibit J:** Town of Yorktown Zoning Change Application Form;
- Exhibit K:** Town of Yorktown Site Plan Application Form; and
- Exhibit L:** Stormwater Pollution and Protection Plan for Kitchawan Barns, LLC, prepared by Hudson Land Design Professional Engineering, P.C., dated March 1, 2021.

WHEREFORE, IT IS RESPECTFULLY requested that the instant matter be placed on the agenda for the Board of Trustees and referred to the Planning Board and any other board, agency or official which the Board of Trustees deems appropriate, for formal recommendation and that the relief sought herein to amend the Schedule of Regulations for the Transitional Zone District bulk and area Regulations for the Premises in furtherance of the proposed addition to the existing office and flex space, be in all respects, granted as described herein.

Respectfully submitted,

**CUDDY & FEDER LLP**

Dated: March 2, 2021

By: \_\_\_\_\_



Taylor M. Palmer  
Attorney for Petitioner  
445 Hamilton Avenue, 14th Floor  
White Plains, NY 10601  
P: 914.761.1300 / F: 914.761.5372