

**DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS (this "Declaration") is hereby made by YANCEY'S FANCY, INC., the undersigned "Declarant", with an address of 857 Main Road, Corfu, New York 14036. Declarant is the owner in fee simple of certain parcels of real property lying in the Town of Pembroke, Genesee County, New York, which property is more particularly described on Exhibit A - Legal Description of the Parcel attached hereto (the "Parcel"). Declarant comes now and, for good and valuable consideration, declares conservation use restrictions on that portion of the Parcel identified as Wetland/Wetland Buffer on Exhibit B - Legal Description of the Protected Property (such delineated portions of the Parcel to be deemed the "Protected Property"). The Protected Property comprises wetlands and adjacent regulated buffers to such wetlands. The Declaration hereinafter stated shall apply to the Protected Property and is by reference, incorporated herein for a description and for all other legal purposes.

**RECITALS**

WHEREAS, the Protected Property is being preserved, restored, established or enhanced as a wetland and buffer to wetlands; and,

NOW, THEREFORE, in consideration of the benefits to be derived by the Declarant and each and every subsequent owner and occupant of the Protected Property, Declarant is placing certain restrictions on the Protected Property for conservation purposes, in order that it shall remain substantially in its restored, enhanced, preserved, open, natural and/or scenic condition, in perpetuity except as otherwise authorized herein.

**1. Transfers & Extinguishment**

Declarant does hereby declare that all of the Protected Property shall be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the covenants, easements and affirmative obligations set forth in this Declaration all of which shall run with the Protected Property and will be binding on all persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title or interest in the Protected Property, or any part thereof, their heirs, executors, administrators, successors and assigns. The terms and conditions of this Declaration shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Protected Property. It shall set forth the terms and conditions of this Declaration either by reference to this Declaration and its recorded location or by attachment and incorporation by reference.

**2. Protected Property as Open and Common Area**

Except as set forth herein, the Protected Property is set aside for conservation use and shall be designated as an undeveloped lot, buffer, open and common area or greenway and will not now, nor in the future, be made part of any single lot or lots in a residential or mixed use subdivision or a subdivided commercial development, but rather the Protected Property shall be

held, maintained and managed by the owner, developer, corporation, homeowner or business association as an open, common and undeveloped conservation area.

### 3. Prohibited Uses

Except as (1) set forth in Declarant's reserved rights, in Section 4B below; or (2) as necessary to carry out wetland and/or buffer restoration, enhancement and/or establishment in keeping with any mitigation plan as approved by USACE or NYSDEC or other competent authority; or (3) as otherwise authorized by 6 NYCRR Part 663 and the Environmental Conservation Law Articles 3 and 24, the actions prohibited by this Declaration on the Protected Property shall include, but shall not be limited to the following:

- A. Clearing, cutting or mowing;
- B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;
- C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, or agricultural waste on the Protected Property;
- D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;
- E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Protected Property; manipulating or altering any natural water course, body of water or water circulation and any activities or uses detrimental to water quality;
- F. Mining, drilling;
- G. Burning, systematically removing or cutting timber or otherwise destroying any vegetation. However, selective pruning of unsafe trees or exotic non-native vegetation may be removed in accordance with current scientific best management practices as set out by the U.S. Forest Service or the New York Forestry Commission;
- H. Spraying with biocides or use of herbicides or pollutants that violate water quality standards;
- I. Introducing exotic species on the Protected Property, altering the natural state of the wetlands or streams or causing erosion or sedimentation;
- J. Grazing or use by domesticated animals such that animal wastes enter soil and water;
- K. Construction of any kind in the wetlands, streams, buffers or upland, whether temporary or permanent;

L. Use of off-road vehicles and use of motorized vehicles except on existing roadways;

M. Any other use of, or activity on, the Protected Property which is or may become inconsistent with the purposes of this Declaration, the preservation of the Protected Property substantially in its natural condition, or the protection of its environmental systems; and

N. Display of billboards, signs, or advertisements on or over the Protected Property, except for the posting of no trespassing signs, temporary signs indicating the Protected Property is for sale, signs identifying the trees, vegetation, wetlands or conservation values of the Protected Property and/or signs identifying the owner of the Protected Property.

#### 4. Easements

A. The Protected Property is free and clear of any and all liens, loans, claims, restrictions, easements, encroachments and encumbrances, except as otherwise identified on the Reserved Encroachments/Future Development annexed to this Declaration as Exhibit C - Reserved Encroachments/Future Development.

B. Environmental impacts, if any, caused by existing easements such as roads, utility lines or pipelines, where such easements are in place as of the date of the recording of this Declaration shall not be considered as causing any prohibited impacts to the Protected Property by their use and maintenance as set forth on Exhibit C - Reserved Encroachments/Future Development. Declarant specifically reserves the right to construct, maintain, and use a roadway through portions of the Protected Property for purposes of access to certain portions of the Parcel and/or neighboring parcels, which right shall inure to the benefit of Declarant's heirs, successors, and assigns.

#### 5. Representations

Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Protected Property;

B. There are no underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned;

C. The Protected Property is in compliance with all federal, state and local laws, regulations and permits and there is no pending or threatened litigation in any way affecting, involving or relating to the Protected Property and its use; and

D. The Protected Property is not land-locked and there is access to the Protected Property by road, dedication of pathway or by an access easement.

**6. Exclusive Possession**

Declarant and its successors and assigns reserve all other rights accruing from their ownership of the Protected Property, including but not limited to the exclusive possession of the Protected Property, the right to transfer or assign their interest in the same, the right to take action necessary to prevent erosion on the Protected Property, to protect the Protected Property from losing its conservation functions and services, or to protect public health or safety, and the right to use the Protected Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purpose of this Declaration.

**7. Access by the General Public**

It is expressly understood and agreed that this Declaration does not grant or convey to members of the general public any rights of ownership, interest in, or use of the Protected Property unless otherwise designated by the owner for such purpose.

**8. Covenant Runs with the Land**

This Declaration shall not terminate upon some fixed amount of time but shall run with the land in perpetuity both as to benefit and as to burden and shall be enforceable against Declarant and all present and future owners, tenants and other holders of any interest in the Protected Property. This Declaration is established for the purpose of preserving, enhancing and conserving wetlands and buffers and the associated conservation values, services and functions.

**9. Recordation of Instrument**

Declarant shall execute and record this instrument in timely fashion in the official records of the Office of the Clerk of the County in which the Protected Property lies. Declarant may re-record this instrument at any time as may be required to preserve its rights.

**10. Protected Property Transfers**

Declarant shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Protected Property (failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants):

NOTICE: This Protected Property Subject to Declaration of Conservation Covenants and Restrictions Recorded at [insert book and page references, county(ies), and date of recording].

**11. Severability Provision**

Should any separable part of these restrictive covenants be held contrary to law, the remainder shall continue in full force and effect.

12. Successors and Assigns

The term "Declarant" shall include the Declarant and the Declarant's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use.

IN WITNESS WHEREOF Declarant has duly executed this Declaration on the 29<sup>th</sup> day of JANUARY, 2015.

IN THE PRESENCE OF:

YANCEY'S FANCY, INC., Declarant

\_\_\_\_\_

By: Wayne P. Henry

Name: \_\_\_\_\_

Name: Wayne P. Henry

Title: President/CEO

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STATE OF NEW YORK     )  
COUNTY OF GENESEE    ) SS.:

On the 29 day of January in the year 2015 before me, the undersigned, personally appeared Wayne P. Henry, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Nicole M. Begin  
Notary Public

**NICOLE M BEGIN**  
**Notary Public, State of New York**  
**Qualified in Genesee County**  
**No. 01BE6237689**  
**My Commission Expires March 28, 2015**

Doc #01-2834136.2

EXHIBIT A

LEGAL DESCRIPTION OF THE PARCEL.

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Pembroke, County of Genesee, State of New York being part of Lot 9, Township 12, Range 4 of The Holland Land Survey bounded and described as follows:

Commencing at a point on the southerly line of N.Y.S. RTE. 5 also known as Old Buffalo Road at its intersection with the westerly line of Brick House Corners Drive as conveyed to the Town of Pembroke and recorded under Liber 877 of Deeds at page 923;

THENCE: S-01°-14'-19"-E, along said westerly line a distance of 209.81 feet to an angle point on said west line of Brick House Corners Drive, being the Point of Beginning;

THENCE: S-15°-15'-23"-E, continuing along said westerly line a distance of 137.54 feet to an angle point;

THENCE: S-74°-44'-37"-W, along a northerly line a distance of 62.00 feet to an angle point;

THENCE: S-15°-15'-23"-E, along a westerly line a distance of 74.00 feet to an angle point;

THENCE: N-74°-44'-37"-E, along a southerly line a distance of 62.00 feet to an angle point;

THENCE: S-15°-15'-23"-E, continuing along said westerly line and an extension of said westerly line a distance of 248.36 feet to an angle point;

THENCE: S-74°-44'-37"-W, a distance of 150.14 feet to a point of curvature;

THENCE Southerly on a curve to the left having a radius of 98.00 feet an arc length of 127.84 feet to a point of tangency;

THENCE: S-00°-00'-00"-W, a distance of 551.78 feet to a point;

THENCE: S-88°-44'-58"-W, a distance of 319.78 feet to a point;

THENCE: N-00°-35'-17"-E, a distance of 1127.83 feet to a point;

THENCE: N-88°-45'-41"-E, a distance of 404.27 feet to the Point or Place of Beginning.

Containing 9.784 more or less acres.

## EXHIBIT B

LEGAL DESCRIPTION OF THE PROTECTED PROPERTY  
(Wetland Restrictive Covenant Area A)

All that tract or parcel of land situate in the Town of Pembroke, County of Genesee, State of New York, being part of Town Lots 8 & 9, Township 12, Range 4 of the Holland Land Purchase and more particularly described as follows:

Beginning at a point being the southwesterly corner of tax account number 19-1-75; thence,

1. N 00°35'17.04" E along a westerly line of tax account numbers 19-1-75 and 19-1-73.1, a distance of 290.07 feet, to a point; thence,
2. N 70°52'13.94" E through the lands of the tax account number 19-1-73.1, a distance of 15.93 feet, to a point; thence,
3. S 00°35'17.04" W through the lands of the tax account number 19-1-73.1, a distance of 5.40 feet, to a point; thence,
4. S 89°24'42.96" E through the lands of the tax account number 19-1-73.1, a distance of 52.95 feet, to a point; thence,
5. S 65°55'16.39" E through the lands of the tax account number 19-1-73.1, a distance of 92.83 feet, to a point; thence,
6. N 62°46'46.30" E through the lands of the tax account number 19-1-73.1, a distance of 15.46 feet, to a point; thence,
7. S 58°39'04.15" E through the lands of the tax account number 19-1-73.1, a distance of 72.26 feet, to a point; thence,
8. N 73°00'17.76" E through the lands of the tax account number 19-1-73.1, a distance of 50.80 feet, to a point; thence,
9. N 23°03'00.40" W through the lands of the tax account number 19-1-73.1, a distance of 45.12 feet, to a point; thence,
10. N 28°24'05.44" E through the lands of the tax account number 19-1-73.1, a distance of 11.38 feet, to a point; thence,
11. S 89°24'42.96" E through the lands of the tax account number 19-1-73.1, a distance of 43.79 feet, to a point; thence,
12. S 00°00'07.59" E through the lands of the tax account number 19-1-73.1, a distance of 129.60 feet, to a point along the northerly line of the tax account number 19-1-75; thence,
13. N 88°45'02.25" E along a northerly line of the tax account number 19-1-75, a distance of 10.01 feet, to a point; thence,

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14. S 00°00'06.55" W through the lands of the tax account number 19-1-75, a distance of 150.04 feet, to a point; thence,
15. S 88°44'57.50" W along a southerly line of the tax account number 19-1-75, a distance of 320.73 feet, to the Point of Beginning, having an area of 1.88 acres more or less.35

All as shown on a map prepared by Clark Patterson Lee, "South Campus Wetland Restrictive Covenant A", dated December 16, 2014.

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**EXHIBIT C**

**RESERVED ENCROACHMENTS/FUTURE DEVELOPMENT**

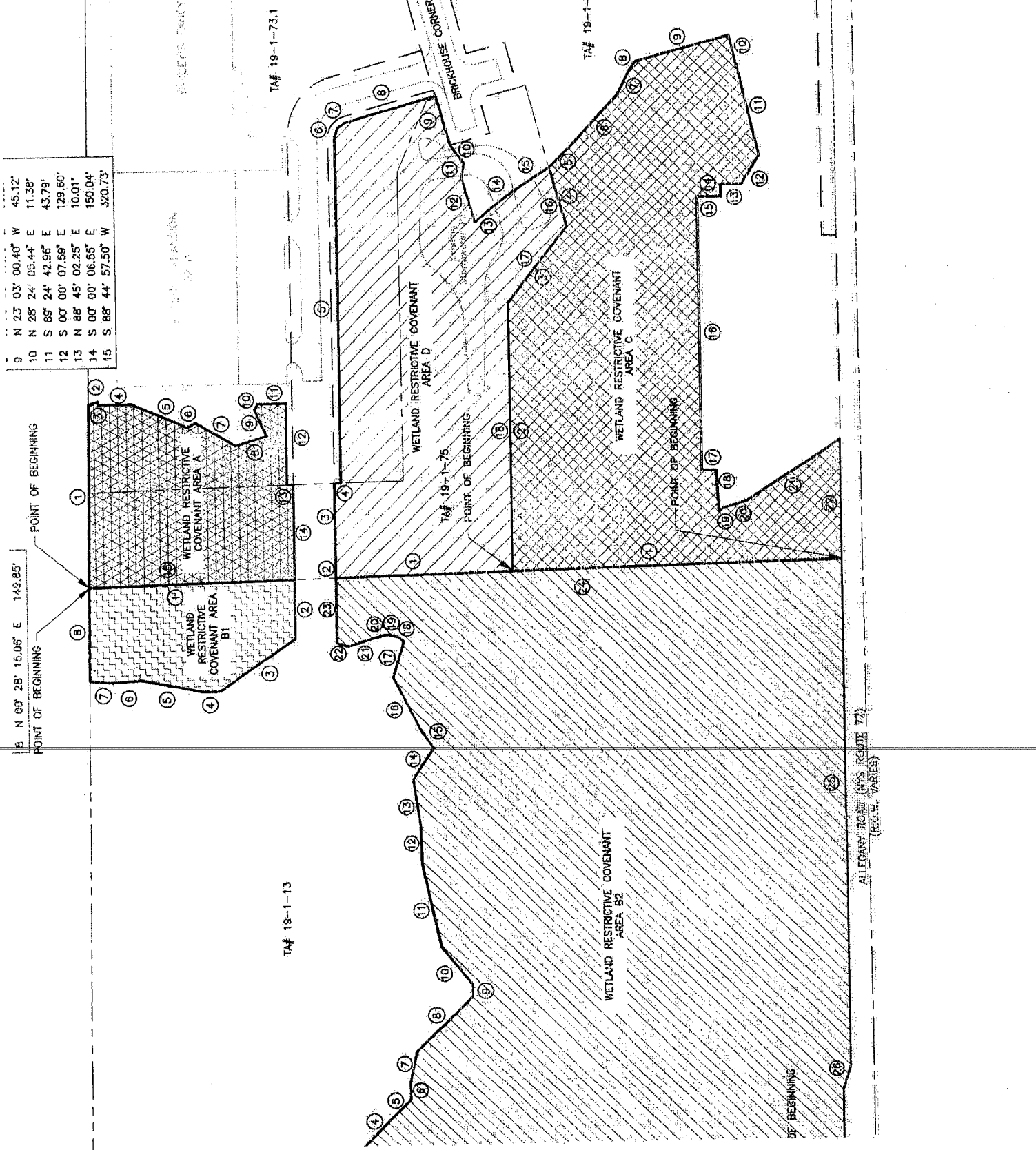
WETLAND RESTRICTIVE COVENANT AREA D

1	S 88° 45' 04.84" W	279.1
2	N 00° 01' 04.54" W	-21.1
3	N 00° 00' 12.48" W	128.1
4	N 88° 44' 57.50" E	10.00
5	N 00° 00' 00.00" E	550.1
6	N 18° 41' 09.35" E	14.1
7	N 56° 03' 58.04" E	14.1
8	N 74° 44' 37.38" E	150.1
9	N 15° 15' 22.82" E	79.63
10	N 36° 47' 38.25" E	35.97
11	N 09° 08' 12.46" W	24.7
12	N 16° 00' 28.27" E	74.59
13	N 48° 27' 18.83" E	38.56
14	N 51° 17' 11.24" E	38.98
15	N 57° 40' 56.33" E	69.76
16	S 15° 15' 22.62" E	100.0
17	S 35° 45' 44.96" W	153.1
18	S 00° 05' 18.62" E	424.8

9	N 23° 03' 00.40" W	45.12
10	N 28° 24' 05.44" E	11.38
11	S 85° 24' 42.96" E	43.79
12	S 00° 00' 07.59" E	129.60
13	N 88° 45' 02.25" E	10.01
14	S 00° 00' 06.55" E	150.04
15	S 88° 44' 57.50" W	320.73

WETLAND RESTRICTIVE COVENANT AREA C

1	S 88° 44' 57.50" W	62
2	N 00° 05' 18.62" W	42
3	N 38° 45' 44.96" E	15
4	N 15° 15' 22.82" W	10
5	N 45° 06' 03.10" E	51
6	N 43° 45' 45.96" E	104
7	N 27° 51' 28.85" E	45
8	N 36° 39' 43.89" E	16
9	N 75° 28' 56.42" E	152
10	S 14° 18' 40.37" E	62
11	S 13° 07' 55.08" E	132
12	S 32° 50' 56.73" W	54
13	N 80° 08' 00.00" W	32
14	S 00° 00' 00.00" E	201
15	N 80° 00' 00.00" W	36
16	S 00° 00' 00.00" E	434
17	N 90° 00' 00.00" E	221
18	S 02° 32' 41.30" E	65.1
19	N 67° 16' 47.68" E	9.8
20	N 74° 14' 58.77" E	38
21	N 56° 58' 01.57" E	171



TA# 19-1-13

TA# 19-1-74

TA# 19-1-75

ALLEGANY ROAD (NYS ROUTE 77)  
(BELOW VARIES)