

**BY-LAWS OF  
MORNINGSIDE ESTATES HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**IDENTITY**

These are the By-Laws of Morningside Estates Homeowners Association, Inc.

These By-Laws provide the method by which Morningside Estates Homeowners Association, Inc. (herein the "Association"), a homeowners association in the Town of Ellicottville, Cattaraugus County, New York, organized under the Not-For-Profit Corporation Law, shall be governed.

The office of the Association shall be as designated by the Board of Directors, or at the address of the Declarant, AWSC, LLC, (herein the "Declarant") 1961 Wehrle Drive, Suite 9, Buffalo, New York 14221.

The fiscal year of the Association shall be the calendar year.

**ARTICLE II  
DEFINITIONS**

A. "Association" shall mean and refer to Morningside Estates Homeowners Association, Inc., its successors and assigns.

B. "Property" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions, and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

C. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

D. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area.

E. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

F. "Declarant" shall mean and refer to AWSC, LLC, its successors and assigns.

G. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions applicable to the Property and recorded in the Cattaraugus County Clerk's Office.

H. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

I. A "Fine" shall mean a sum of money determined and levied by the Board of Directors or their agent on an Owner for the violation of the Declaration, By-Laws, or Rules of the Association. A fine can not exceed 10% of the total annual common assessment.

### ARTICLE III BOARD OF DIRECTORS

A. Membership and Initial Selection. The Association shall be governed by a Board of Directors consisting of not less than three (3) nor more than five (5) persons. These directors shall be members in good standing of the Association. The initial Board of Directors shall be designated by Declarant who is authorized to choose the directors until all Lots in all phases have been transferred or until seven (7) years after the transfer of the first unit, whichever first occurs. The directors designated by the Declarant need not be members of the Association.

B. Term and Election. At such time as the members become empowered to elect the Board of Directors they shall elect three (3) directors, the person receiving the greatest number of votes serving three (3) years, the person receiving the next highest number of votes serving two (2) years, and the person receiving the next highest number of votes serving one (1) year. Thereafter, at each annual meeting the members shall elect one (1) director to serve for three (3) years.

C. Removal. Any director may be removed from the Board with or without cause by a majority vote of the members of the Association. In the event of death, resignation, or removal of a director his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

D. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

E. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining approval of all the directors. Any actions so approved shall be in writing and have the same effect as though taken at a meeting of the directors.

F. Powers and Duties. The Board of Directors shall exercise all the powers and duties permitted the governing body of the Association, including those existing under the Not-For-Profit Corporation Law of New York State. Such powers and duties shall be exercised in accordance with the provisions of the Declaration of Covenants, Conditions, and Restrictions applicable to the property recorded in the Cattaraugus County Clerk's Office (herein the "Declaration") which govern the use of the land, and shall include but shall not be limited to the following powers and duties:

1. To make and collect assessments, including special assessments, against members to defray the costs of the Association. To file a lien against any property for which

assessments are not paid within thirty-one (31) days after due date, or to bring an action at law against the Owner personally obligated to pay the same.

2. To establish reserve funds for such lawful purposes as it, in its sole discretion, may determine necessary or desirable for the financial security of the Association, including capital reserve accounts.

3. To use the proceeds of assessments in the exercise of its powers and duties.

4. To issue or cause to be issued upon demand of a buyer or seller or their attorney or mortgagee, a certificate setting forth whether or not an assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

5. To assure the maintenance, repair, replacement and operation of all Association property for the common use and enjoyment of the Owners.

6. To adopt, publish, and distribute to members rules and regulations governing the use of the Common Areas, and the personal conduct thereon of members and their guests, and to establish penalties or fines for the infraction thereof. The initial rules are attached hereto as Schedule "A".

7. To enforce by legal means the provisions of the Declaration, By-Laws, and rules and regulations for the use of the Property.

8. To procure and maintain adequate property casualty insurance on all townhome units and liability and casualty insurance on property owned by the Association. The Board of Directors shall annually review the amount of insurance coverage to assure that the Association and its members are fully protected. The Board shall also procure insurance on all directors, officers or employees having fiscal responsibility as it may deem appropriate.

9. To authorize the officers to enter into management agreements with third parties in order to facilitate the efficient operation of the facilities and services of the Association. It shall be the primary purpose of such management agreements to provide for the administration, management, repair and maintenance of the facilities, and all improvements included therein, designated as Common Areas, and the receipt and disbursement of such funds as may be authorized by the Board of Directors. The term of these management agreements shall be as determined by the Board to be in the best interests of the Association.

10. To employ personnel for reasonable compensation to perform, or to retain and/or contract for, the services required for proper administration of the purposes of the Association.

11. To pay the cost of all snow plowing, lawn care and other Lot services rendered to the Association and not billed to members' individual Lots.

12. To receive, consider, and act upon any application which pertains to the building, rebuilding, or any alteration of a structure, and landscape of property in accordance with Article IX of the Declaration.

13. To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

**G. Method of Calling Meetings.**

1. The first meeting of the Board of Directors shall take place within six (6) months after the closing of the first Lot and thereafter regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board. Notice of regular meetings shall be given to each director personally or by mail, telephone or telegram at least three (3) days prior to the day named for the meeting unless such notice is waived. The first regular meeting held in each calendar year shall be the annual meeting of the Board.

2. ~~Special meetings of the Board of Directors may be called by the President and must be called by the Secretary at the written request of three directors. No less than three (3) days notice of the meeting shall be given personally, or by mail, telephone, or telegram, which notice shall state the time, place, and purpose of the meeting.~~

3. Any Director may waive notice of a meeting before, at or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

**H. Quorum.** A quorum at the Board of Directors meeting shall consist of a Director or Directors present in person, holding at least a simple majority of the eligible votes. The acts of the Board approved by a majority of the Directors present in person or by proxy at a meeting at which a quorum is present shall constitute the acts of the Board of Directors except as specifically otherwise provided in the Declaration. If at any meeting of the Board of Directors there be fewer than a quorum present, the directors present shall adjourn the meeting from time to time until a quorum is present. At an adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**I. Action Without Meeting.** Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the members of the Board of Directors consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Board of Directors.

**J. Officers.** The officers of the Association shall be a President, Secretary, and Treasurer. They shall be elected at the annual meeting by the Board of Directors from among the members of the Board and shall hold office for a term of one (1) year or until the next annual meeting. Officers may be removed and replaced by vote of the directors at any meeting. Any person may hold two (2) offices except that the President shall not be the Secretary. The Board of Directors may from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.



1. The President shall be the chief executive officer of the Association and shall preside over the meetings of the Board of Directors and of the members. He shall have all the powers and duties which are usually vested in the office of the president, including but not limited to the power to appoint committees from among the directors, members and residents of the subdivision from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.

2. The Secretary shall keep the minutes of all proceedings of the Board of Directors and of members. He shall attend to the giving and serving of all notices to the directors and other notices required by law. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary, and as may be required by the directors or the President. The Secretary shall keep a current record containing the names, alphabetically arranged, of all persons who are members of the Association, showing their place of residence. Such record shall be open for inspection as prescribed by law. In the absence or disability of the President, he shall exercise the powers and perform the duties of the President.

3. The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members including an account for each Lot in the subdivision; he shall keep the books of accounts of the Association in accordance with good accounting practices. The Treasurer shall receive and deposit, in appropriate bank accounts as shall be designated as depository by the Board of Directors all monies of the Association; disburse funds of the Association as directed by action of the Board of Directors; sign with the President all checks and promissory notes of the Association; cause an annual audit of the accounts of the Association to be made by an accountant, selected by the Board of Directors, at the completion of each fiscal year; and prepare an annual budget and statement of income and expense at the inception of each fiscal year. Upon adoption of said budget and financial statement by the Board of Directors, the Treasurer shall deliver a copy of same to each member of the Association. The fiscal year shall be the calendar year.

4. Compensation. The officers shall not receive any salary for their services. However, an officer may be reimbursed for actual expenses incurred in the performance of his duties.

5. Directors and Officers Insurance. The Association shall purchase and maintain insurance on behalf of any person who is or was a Director or an officer of the Association against any liability asserted against him or her and incurred by such individual in any such capacity or arising out of his or her status as such. The Directors and officers of the Association shall have the liabilities, and be entitled to indemnification, as provided in the Not-For-Profit Corporation Law.

6. Vacancies. A vacancy in any office may be filled by appointment by the remaining members of the Board of Directors. The officer so appointed to such vacancy shall serve for the remainder of the term of the office to which they are appointed.

**ARTICLE IV  
ANNUAL MEETINGS OF THE HOMEOWNERS' ASSOCIATION  
AND POWERS OF MEMBERS**

A. **Meetings.** Meetings of the Members shall be held annually and when called by the Board of Directors, or by the President, or by any three (3) members. Board members shall be elected at the Annual Meeting. Special assessments shall have the assent of two-thirds (2/3) of the votes of the Members. All meetings shall be held at the principal office of the Association or at such other place in the Town of Ellicottville, or any immediately adjacent town, as may be fixed by the President. The meeting notice shall state the time, date, place and purpose of the meeting.

B. **Notice of Meeting.** The Secretary shall give not less than seven (7) days notice of any meeting of members personally, or by mail, or telegram, which notice shall state the time, date, place, and purpose of the meeting. Any member may waive notice of a meeting before, at, or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

C. **Quorum.** A quorum at members meetings shall consist of a simple majority of the eligible members present by proxy or in person. The acts of the members must be approved by vote of a simple majority of the eligible members except as specifically otherwise provided in these By-Laws, the Declaration, or the Not-For-Profit Corporation Law.

**ARTICLE V  
ARCHITECTURAL & LANDSCAPE CONTROL**

A. The maintenance, repair and replacement of the exterior of all townhome units and garages, including all roofs and landscaping and lawn maintenance are the responsibility of the Association.

B. No fences, or walls shall be erected or maintained upon the Property except those erected at the time of the original construction of the buildings located thereon, or of a substantially similar nature, without the written application to and approval by the Board of Directors.

C. No alterations, additions, building, rebuilding, or any exterior modification of any kind, or re-painting of the exterior of any building shall be made unless it shall conform in architecture, material and similar color to the building as originally constructed, and is approved by the Board of Directors.

D. No building, fence, wall or other structure or change in landscaping shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration thereto be made, unless and until the plans and specifications showing the nature, kind, shape, height, materials, color, and locations of the same shall have been submitted to, and approved in writing as to the harmony of external design and location in relation to surrounding structures, by the Board of Directors of the Association.

In the event that said Board of Directors fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, no approval will be required and compliance with this Article will be deemed to have been made.

#### ARTICLE VI LIABILITY OF BOARD OF DIRECTORS

In order to limit the liability of the Owners, any contract, agreement, or commitment made by the Board of Directors shall state that it is made by the Board of Directors as agent for the Owners as a group only and that no member of the Board of Directors nor individual Owner shall be liable for such contract, agreement, or commitment. The Board of Directors shall have no liability to the Owners in the management of the Association except for willful misconduct or bad faith and the Owners shall severally indemnify all members of the Board of Directors in accordance with their duties as such members except for acts of willful misconduct or acts made in bad faith. Such several liability of the Owners shall, however, be limited to the extent that his proportionate interest in the common area bears to the total liability of the members of the Board of Directors.

#### ARTICLE VII AMENDMENTS

A. These By-Laws may be amended at a regular or special meeting of the Members by a vote of two-thirds (2/3) of a quorum of Members is present in person or by proxy.

B. In case of any conflict between the Articles of Incorporation and these By-Laws the Articles shall control and in the case of any conflict between the Declaration and these By-Laws the Declaration shall control.

This is a true copy of the By-Laws of the Morningside Estates Homeowners Association, Inc. as of this 22 day of December, 2011.

MORNINGSIDE ESTATES HOMEOWNERS  
ASSOCIATION, INC.

By:   
MARK BARNES, Secretary

**SCHEDULE A  
RULES AND REGULATIONS**

In addition to the other provisions of the By-Laws, the following rules and regulations, together with such additional rules and regulations as may hereafter be adopted by the Board of Directors, shall govern the use of the Lots and Common Areas.

1. The Common Area pathways must not be obstructed or encumbered.
2. Motor vehicles shall be parked only in areas so designated on the Site Plan approved by the Town of Ellicottville Planning Board on January 29, 2007.
3. The landscaping of the Common Area is for the enjoyment of the Owners. Trees, shrubs, bushes, and all landscaping shall not be cut, tampered with, or harmed in any way.
4. Garbage, trash, and cuttings shall not accumulate on Lots and the Common Area. Collection of garbage and trash from Lots shall be at the direction of the Board of Directors.
5. ~~A maximum of two (2) pets, in the aggregate, may be kept in any dwelling or on~~ any Lot. No animals of any kind shall be raised, bred or kept in any dwelling or on any Lot, except that dogs, cats or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose(s). No Owner or resident shall allow any pet to run free in the Common Areas. Pets on the Common Areas shall be leashed. Owners shall be responsible for picking up after pets.
6. Motor vehicle repair is to be carried out in an enclosed garage.
7. Boats, trailers and large vehicles shall be stored inside garages. Temporary driveway parking of such vehicles is permitted.
8. Storage of equipment, supplies and firewood shall be in garages only.



**EXHIBIT E**

**Site Plan**

**(Attached)**

