



James K. Griffith
CATTARAUGUS COUNTY CLERK
Cattaraugus County Center 303 Court Street
Little Valley, NY 14755
(716) 938-9111
Fax: (716) 938-2773

Instrument Number
195095-001

No. of Pages: 16
(including this
cover page)

Receipt No. 195095

Date: 04/19/2013

Time: 02:11 PM

Document Type: MISC RECORD

Parties
To Transaction: DECLARATION-MORNINGSIDE

Town/City:

Delivered By:

DUKE HOLZMAN PHOTIADIS & GRESENS LLP

Return To:

DUKE HOLZMAN PHOTIADIS & GRESENS LLP
1800 MAIN PLACE TOWER
350 MAIN ST
BUFFALO NY 14202

Deed Information

Taxable Consideration:

State Transfer Tax:

RETT No.:

State of New York
Cattaraugus County Clerk

Mortgage Information

Taxable Mortgage Amount:

Basic Mortgage Tax:

Special Mortgage Tax:

Additional Mortgage Tax:

Mortgage Serial No.:

This sheet constitutes the Clerk endorsement required by Section 316-A(5) & Section 319 of the Real Property Law of the State of New York.

Cattaraugus County Clerk

Please do not remove this page.



REVISED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

MORNINGSIDE ESTATES HOMEOWNERS ASSOCIATION, INC.

This Declaration made the 18th day of April, 2013, by AWSC, LLC, hereafter called "Declarant".

WHEREAS, Declarant is the owner of certain real property in the Town of Ellicottville, Cattaraugus County, New York, more particularly described in Schedule "A" attached hereto and made a part hereof, said land in its entirety being hereinafter referred to as the "Property"; and

WHEREAS, Declarant has subdivided the Property and desires to subject Phase I of the Property as shown on an amended map of the Morningside Estates Subdivision revised through March 7, 2013 and filed in the Cattaraugus County Clerk's Office on March 20, 2013 as Instrument Number 193554-001 ("Phase I") to those certain covenants, agreements, easements, restrictions, charges, and liens as hereinafter set forth; and

WHEREAS, Morningside Estates Homeowners Association, Inc. is a New York Not-for-Profit Corporation formed for the purpose described in its Certificate of Incorporation;

NOW THEREFORE, Declarant hereby declares that all of Phase I (and the Common Areas herein described) shall be subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, burden and bind Phase I for and during the period of time specified hereafter, and be binding on all parties having any right, title or interest in Phase I, any part thereof, or any additional part of the Property subsequently subjected to the Declaration, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I NAME AND LOCATION

The name of the corporation shall be the Morningside Estates Homeowners Association, Inc., located at NYS Route 219 (a/k/a NYS Route 242), in the Town of Ellicottville, Cattaraugus County, New York with an initial mailing address of 6394 Route 242 East, Unit 3, Ellicottville, New York 14231.

ARTICLE II DEFINITIONS

SECTION 1: "Association" shall mean and refer to the Morningside Estates Homeowners Association, Inc., its successors and assigns.

SECTION 2: "Common Areas" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

The Common Areas to be owned by the Association at the time of the conveyance of the first Lot shall include all of the premises described as Phase I, a map of which is attached hereto as Schedule "B", excepting therefrom the building lots numbered 1 through 18, as shown on the map of Phase I of the Property filed in the Cattaraugus County Clerk's Office.

SECTION 3: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of Phase I, including contract sellers, excluding those having such interest merely as security for the performance of an obligation.

SECTION 4: "Declarant" shall mean and refer to AWSC, LLC, its successors and assigns if such successors or assigns shall acquire more than one undeveloped Lot from Declarant for the purpose of development.

SECTION 5: "Phase I" shall mean and refer to the area shown on Schedule "B", which includes all the Lots and Common Areas initially made subject to the Declaration. A legal description of Phase I is attached as Schedule "C".

SECTION 6: "Property" shall mean and refer to Schedule A, which includes Phase I and all the adjacent land currently owned by Declarant which may be subjected to this Declaration.

SECTION 7: "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or resubdivision map of the Property, with the exception of the Common Areas.

SECTION 8: A "Fine" shall be a sum of money not to exceed ten percent (10%) of the total annual common assessment for an individual Lot. A fine may be a penalty.

ARTICLE III PROPERTY RIGHTS

SECTION 1: OWNER'S EASEMENTS OF ENJOYMENT: Every Owner shall have a right and easement of enjoyment in and to the Common Areas, including the rights of ingress and egress to Owner's property over the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association, pursuant to its By-Laws, to adopt rules and regulations governing the use of the Common Areas and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.
- (b) The right of the Association to suspend the right to the use of the Common Areas other than any common access road, by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (c) The right of the Association to grant easements in, dedicate or transfer title to the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members approving such transfer. No such dedication or transfer shall be effective unless an instrument agreeing to such a dedication or transfer has been signed by 85% of each class of members and their mortgagees has been recorded.
- (d) The right of the Association to designate certain portions of the Common Areas as paths, community gardens, specific recreation areas, storage, and parking areas for the use of Owners, their invitees and guests. However, invitees and guests are restricted from the use of storage and garden areas, and the parking of trailers.

(e) The right of invitees and visitors of any Owner to ingress and egress over the Common Areas.

(f) The right of the Declarant to grant an easement or easements for ingress or egress over the entrance to the Property from the public highway to accommodate the development of that part of the Property not included within Phase I.

SECTION 2: DELEGATION OF USE: Owners may delegate their right of enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside in Phase I.

ARTICLE IV EASEMENTS

SECTION 1: EASEMENTS FOR UTILITIES. The Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies and to the Town of Ellicottville for walking paths as part of a community trail system over any part of Phase I (excluding Lots not owned by Declarant). In addition, the buildings on Lots 7 through 18 will be subject to private or utility company easements to accommodate utility service throughout the respective buildings.

SECTION 2: EASEMENTS FOR ENCROACHMENTS. Each Lot, and the property included in the Common Area, shall be subject to (a) an easement for encroachments created by construction, settling and overhangs for all buildings constructed by Declarant, and (b) encroachments by any patio and/or deck located in the rear of any Lot. Valid easements for said encroachments, and for the maintenance of same, so long as such encroachments stand, shall and do exist. In the event that any structure containing two or more living units is partially or totally destroyed and then rebuilt, or is in need of repair, the Owners of the living units so affected agree that minor encroachments of parts of the adjacent living units on adjoining Lots or on the Common Area due to such construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

SECTION 3: OTHER EASEMENTS. There is hereby created a blanket easement, provided use of said easement does not interfere with any improvements, upon, across, over and under all of Phase I, for ingress, egress, installation, replacement, repair and maintenance of all utilities, including but not limited to water, wastewater, surface water, gas, telephones, electricity, cable TV, and a master TV antenna system.

By virtue of this easement it is expressly permissible to erect and maintain the necessary equipment on Phase I, and to affix and maintain electrical or telephone wires and conduits, wastewater, surface water, and water lines, on, above or below any land owned by the Association and/or Owners.

An easement is hereby reserved to the officers, agents, or employees of the Association, including the employees of any management company under contract with the Association, over all of the Common Areas, to protect its interest by entrance to any Common Areas, and to maintain any utilities for which an easement has been granted.

An easement is hereby reserved to Declarant to enter the Common Areas and Lots during the period of development and sale of Phase I, or any additions to Phase I, and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the development and sale of Lots, including without limitation, a sales office, storage

area, and signs provided that this does not unreasonably obstruct access by members of the Association.

ARTICLE V MEMBERSHIP & VOTING RIGHTS

SECTION 1: MEMBERSHIP. Every Owner of a Lot which is subjected by this Declaration to assessment by the Association shall be a member of the Association. Membership shall be appurtenant to and may not be separated from, ownership of any Lot which is subject to assessment.

SECTION 2: The Association shall have two CLASSES OF VOTING MEMBERSHIP -

CLASS A. Class A members shall be all Owners, with the exception of Declarant. Each Class A member shall be entitled to one vote. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

CLASS B. The Class B member(s) shall be the Declarant or its successors or assigns and shall be entitled to one vote for so long as one Lot is owned by Declarant. The Class B membership shall cease and be converted to Class A membership when title to all Lots in all phases has been transferred, when Declarant voluntarily transfers control to the Owners or seven (7) years after the first Lot has been conveyed by Declarant, whichever occurs first. Class A members shall not be entitled to vote for members of the Board of Directors until all Lots in all phases have been transferred, until Declarant voluntarily transfers control to the Owners or seven (7) years after the first Lot is transferred, whichever occurs first.

ARTICLE VI COVENANT FOR ASSESSMENTS

SECTION 1: CREATION OF A LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. The Declarant, for each Lot owned within Phase I, hereby covenants, and each Owner of any Lot by acceptance, of a deed for such Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual common assessments and special assessments. Annual common assessments are for maintenance charges including real estate tax charges for the Common Areas. Special assessments shall include the cost of reconstructing those portions of the Common Areas which cannot be repaired, and for emergencies as the need therefore arises. All assessments shall be established and collected as hereinafter provided. The covenant in this Section shall not constitute a guarantee, or promise of any kind by Declarant to pay any assessment, or any other obligation of any Owner, other than Declarant.

The annual common maintenance assessments and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs, late charges, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title, unless expressly assumed by them.

SECTION 2: PURPOSE OF ASSESSMENTS. Assessments levied by the Association shall be used exclusively (i) to operate, maintain, repair, improve, construct, reconstruct and preserve the Common Areas owned by the Association, exclusively for the benefit of its members, their guests, tenants and invitees, and (ii) to provide service for the individual Lots as described further in this Declaration.

SECTION 3: SPECIAL ASSESSMENTS. In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, emergency repair, service or replacement of any improvement upon the Common Areas, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members, present in person or by proxy, at a meeting duly called for this purpose.

SECTION 4: NOTICE AND QUORUM for any action authorized under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 of this Article VI shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of members, in person or by proxy, entitled to cast two-third (2/3) of all the votes of the membership shall constitute a quorum.

SECTION 5: RATE OF ASSESSMENT. Annual common and special assessments shall be fixed at a uniform rate for all Lots, and may be collected on a quarterly or annual basis. In the event any part of the Property is developed for such residential use other than attached townhouses subject to this Declaration ("Non-HOA Units"), each Non-HOA Unit so developed such as apartment units, single family residences or individual hotel rooms shall be assessed an amount equal to the amount paid by any Lot owner for the maintenance and repair of any part of the Common Area available for the use of such Non-HOA Unit(s).

SECTION 6: DUE DATES FOR ANNUAL COMMON & SPECIAL ASSESSMENTS. The Board of Directors shall annually fix the amount of the assessments against each Lot. Written notice of any change in the assessments shall be sent to every Owner subject thereto not less than thirty (30) days prior to the effective date of such change.

Due date(s) for payment of assessment shall be the first day of each quarter or as established by the Board. Payments received after the 10th of the month may, at the discretion of the Board, be subject to a late charge, which charge shall be a percentage of the assessment not to exceed the prime lending rate charged by Manufacturers and Traders Trust Company at the time of the charge plus three (3) percent.

The Association shall, upon demand of a buyer or seller or their attorney, furnish a certificate signed by an officer of the Association or the Managing Agent, setting forth whether the assessments on a specified Lot have been paid.

SECTION 7: EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the date said assessment is due shall become a lien against the Lot, and shall bear interest as set forth in Section 6 above from the due date. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of a Lot.

The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against the property, and interest, late charges, costs, and reasonable attorney's fees of any such action will be added to the amount of such assessment.

Each such Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such charge, and to enforce the aforesaid by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association the power of sale in connection with such lien.

The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting on behalf of the Owners, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

SECTION 8: SUBORDINATION OF THE LIEN TO FIRST MORTGAGES. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

SECTION 9: RESERVES AND SURPLUSES. The Association's Board shall establish, from time to time, reserves for such lawful purposes as in its sole discretion it may determine necessary or desirable for the greater financial security of the Association and the effectuation of its purposes. The Association shall not be obligated to spend in any fiscal year all the sums collected in such year, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the annual assessment in the succeeding year, but may carry forward the same from year to year.

SECTION 10: CONTRACTUAL AUTHORITY. The Association shall be entitled to contract with any corporation, firm or other entity in the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance of the Association hereunder.

ARTICLE-VII MAINTENANCE

Assessments levied by the Association shall be used exclusively

- (1) to pay all administrative costs for operation of the Association;
- (2) to pay insurance premiums;
- (3) to operate, maintain, repair, improve, construct, reconstruct and preserve the Common Areas owned by the Association, exclusively for the benefit of its members, their guests, tenants and invitees; and
- (4) to provide the following services:

maintenance and repair of exteriors of all townhome units, including windows, roofs, patios, decks and porches;

maintenance, repair, improvement, and snow plowing of driveways and parking areas;

garbage and trash removal;

maintenance and repair of garbage dumpsters and dumpster enclosures; Snow shoveling of sidewalks and steps; and

maintenance of Common Areas drainage swales and retention areas for surface water.

- (5) To maintain, repair and replace all landscaping as shown on the Landscaping Plan that was approved by the Town of Ellicottville Planning Board on January 29, 2007.

ARTICLE VIII USE OF PROPERTY

The use of Phase I shall be restricted to and in accordance with the following provisions:

SECTION 1: A Lot shall be used for single family residential purposes only.

SECTION 2: The Common Areas shall be used for the use and enjoyment of the Owners, their guests, invitees and assigns.

SECTION 3: The Board of Directors is empowered to serve written notice of any violations of these restrictions. Such written notice shall be given at least two (2) times. If an Owner fails to comply within five (5) days after receipt of the second notice, the Board of Directors is empowered to assess a fine. A separate fine may be imposed for each violation. Unpaid fines will be considered additional assessments and will become-a lien upon the Lot.

SECTION 4: The following shall apply to all Lots and Common Areas:

- (1) Only one (1) single-family dwelling and garage shall be erected, altered, placed or permitted to remain on any Lot.
- (2) Each member's dwelling and Lot shall be maintained in good repair and overall appearance. If a member fails to maintain his house or Lot in a reasonably well maintained and orderly manner, the Board of Directors may contract for additional exterior and/or yard maintenance and any expenses incurred shall be considered additional common charges against the Lot in question.
- (3) All private passenger motorized vehicles will be parked and stored in garages or on driveways and not on any other portion of the Lot. Trailers and boats shall be stored in garages or in designated areas. Motor vehicles making deliveries or providing service to the Lots are permitted as needed. No part of any Lot or Common Areas shall be used continuously for tent camping or the parking of sleeper vans, campers or tent trailers. No motor vehicles shall be parked at any time on any roadway in a way that would impede access to any part of Phase I by emergency vehicles. Motor

vehicles shall be parked only in areas designated for parking on the Site Plan approved by the Town of Ellicottville Planning Board on January 29, 2007. The Association reserves the right to tow any vehicles in violation of this provision.

- (4) Signs. Unless approved in writing by the Board of Directors of the Association, no sign or other advertising devise of any nature shall be placed for display to the public view on any Lot or other portion of Phase I. This Section shall not apply to temporary signs erected by or with the permission of Declarant in connection with the initial sale of Lots.
- (5) Garbage and Refuse Disposal. Except for building materials during the reasonable course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any Lot or other portion of Phase I. All facilities for the storage or disposal of Trash shall be kept and maintained in a clean, safe and sanitary condition by the Association.
- (6) Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of Phase I, nor shall anything be done thereon that may be or become a nuisance or annoyance in the area or to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances, shall be controlled so as not to (i) be detrimental to or endanger the public health, safety, comfort or welfare, (ii) be injurious to property, vegetation or animals, (iii) adversely affect property values or otherwise produce a public nuisance or hazard or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.
- (7) Dwelling in Other Than Residential Units. No temporary building, trailer, mobile home, basement, shack, barn, outbuilding, shed, garage, building in the course of construction or other temporary structure shall be constructed on, or used, temporarily or permanently, as a dwelling, on any Lot or other portion of Phase I.
- (8) Commercial and Professional Activity. No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of Phase I without the consent of the Board of Directors of the Association. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.
- (9) Unlicensed Vehicles, Parking of Recreational and Commercial Vehicles. No unlicensed vehicles shall be parked on Phase I. Unless used in conjunction with construction on Phase I, or with the maintenance, repair or replacement of Phase I, there shall be no outside storage of or parking of recreational vehicles, commercial vehicles of a weight of two (2) tons or more, camper bodies, boats or trailers, for more than two (2) consecutive days or for more than 5 days of any calendar month in any location on a Lot, except as may be otherwise be consented to by the Board of Directors of the Association.

- (10) Outdoor Repair Work on Vehicles, Boats or Machines. With respect to a Lot for which the dwelling thereon has been issued a certificate of occupancy by the Town of Ellicottville, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot, except with the consent of the Board of Directors of the Association.
- (11) Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with construction on Phase I or with the maintenance, repair or replacement of Phase I, or unless otherwise consented to by the Board of Directors of the Association, the following shall not be permitted to remain overnight on Phase I in any location as to be readily visible from any roadway:
 - a. commercial vehicles of a weight of two (2) tons or more;
 - b. unlicensed motor vehicles of any type.
- (12) No Hunting or Discharge of Firearms. There shall be no hunting and no discharge of fire arms, air rifles or explosives of any kind on Phase I.
- (13) Laundry Poles and Lines. Unless otherwise consented to, by the Board of Directors of the Association, laundry poles and lines outside of the residences are prohibited.
- (14) Television and Communication Antennas. No outside television, radio, "C.B." or other communication antenna shall be erected on any Lot except individual dish antennas not to exceed 24 inches in diameter which may be attached to an individual residence.
- (15) Exterior Storage. Unless otherwise authorized in writing by the Board of Directors of the Association, there shall be no exterior storage or exterior storage facilities or structures on any Lot except for cooking grills which may be stored on a deck or patio. By way of illustration and not of limitation, the outdoor storage of the following is intended to be prohibited: unlicensed vehicles, boats, tools, sheds.
- (16) No Open Fires. No open fires of any kind shall be permitted on any Lot except within the confines of a fire place or barbecue pit, the construction of which has been approved by the Association or in a cooking device, the design of which is acceptable to the Association. All such fires shall be attended to at all times and shall be thoroughly extinguished upon completion of use.
- (17) As required by the Town of Ellicottville, (a) the primary use of the garage is for vehicular parking. The garage may also be used for storage provided that the number of parking spaces in the garage is not less than that shown on the approved site plan; (b) the open space shown on the Final Plat for the Property designated "useable open space" on the Final Plat shall be maintained as permanent useable open space; and (c) designated parking spaces shall not be used for snow storage. Any modification of the restrictions in this subparagraph (17) is subject to and conditioned on prior approval by the Town of Ellicottville, Planning Board, if granted.

**ARTICLE IX
ARCHITECTURAL & LANDSCAPE CONTROL**

SECTION 1: Landscape care of the Common Areas and the landscaped area of each Lot is the responsibility of the Association.

No fence, mailboxes, or walls shall be erected or maintained upon Phase I 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.

SECTION 2: No alterations, additions, rebuilding, exterior modification of any kind, or re-painting of the exterior of any building shall be made unless it shall conform in architecture, is similar in material and color to the building as originally constructed, and is approved by the Board of Directors.

SECTION 3: No building, fence, wall or other structure or change in landscaping, shall be commenced, erected or maintained upon Phase I, nor shall any exterior addition to or change or alteration thereto be made, 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.

SECTION 4: All landscaping as installed by the Declarant and approved by the Town of Ellicottville, shown on Landscaping Plan, C-103, revised through July 17, 2006, shall be maintained by the Association and replaced as needed within six (6) months of the death, destruction or removal of any landscape planting. Vegetation shall be maintained, and replaced as necessary and other landscaping features shall be maintained, repaired and replaced, as necessary, to maintain the same level of landscaping as shown on the approved Landscaping Plan.

SECTION 5: The Declarant retains the right to approve all proposed plans for completion of any unfinished unit. Prior to commencement of construction, a Unit owner must submit his or her proposed design for the intended buildout to the Declarant for review and approval. Unit owners shall employ only contractors pre-approved by the Declarant.

In the event that the Board of Directors or the Declarant or its successor fail to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to them, approval will not be required and compliance with this Article will be deemed to have been completed.

**ARTICLE X
INSURANCE**

(a) Each of the Owners shall obtain and pay for insurance coverage on or for their personal liability, personal property and for no less than \$50,000.00 on the Improvements and Betterments (defined below) in or attached to the improvements on their Lot. The policy shall be written on a form known as Homeowners 6 or "HO 6". If the Lot is titled in such a way as to not be eligible for an "HO 6" policy, a commercial or business unit owner's Condominium Policy must be acquired with no less than a \$50,000.00 limit on Improvements and Betterments. Personal Property

in the Unit should be insured for the replacement cost of such property and a liability policy limit of no less than \$300,000.00 shall be required.

(b) For the purposes of this Article, Improvements and Betterments are defined to include, but not necessarily be limited to the following: all interior drywall, all drywall finished surfaces, ceilings and sub-floors, floor coverings such as carpet or tile, all fixtures, cabinets, equipment, machinery, elements, pipes, ducts, wiring, conduit, decks and hot tubs and plumbing and plumbing fixtures within the boundaries of each owner's respective Unit. Failure to insure the Improvements and Betterments for \$50,000.00 will result in an Owner being financially responsible for up to \$50,000.00 on such property.

(c) Each Owner(s) shall provide a waiver of subrogation in favor of all other Owners as well as a waiver of subrogation in favor of the Association, its officers and directors.

(d) The Association has the responsibility to insure the buildings located on the Lots. While it is understood that the Association consists of all of the individually titled Lots with improvements, the form of insurance to be used on the buildings is a commercial condominium form in order to coordinate with the HO 6 form required of each of the Owners. The buildings are to be insured on a replacement cost basis, if available. The Association waives all rights of subrogation against any and all of the Owners.

(e) The building policy will have no specific exclusions on the Improvements and Betterments. It is to be understood that after each Owner has satisfied the \$50,000.00 responsibility to insure or to be financially responsible for the first \$50,000.00 coverage of Improvements and Betterments on a given Lot, the Association policy will cover the value of such Improvements and Betterments on an excess basis.

(f) The Association policies shall cover the interests of the Association, the directors, the officers and each of the Owners and their mortgagees as their interests may appear.

ARTICLE XI PARTY WALLS

SECTION 1: GENERAL RULES OF LAW TO APPLY. Each wall which is built as part of the original construction of the dwelling units upon the Property and placed on the dividing line between any two Lots shall constitute a party wall for the purposes of this Declaration only, and to the extent not inconsistent with the provisions of this Article and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

SECTION 2: SHARING OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

SECTION 3: DESTRUCTION BY FIRE OR OTHER CASUALTY. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

SECTION 4: WEATHERPROOFING. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole costs of furnishing the necessary protection against such elements.

SECTION 5. RIGHT OF CONTRIBUTION RUNS WITH THE LAND. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE XII ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION

SECTION 1: Declarant, its successors or assigns, shall have the right, without the consent of the members of the Association, to subject additional areas which are part of the Property to this Declaration within seven (7) years of the original date of this instrument, such areas to be developed, subject to SECTION 3 below, substantially as in Phase I.

However, neither Declarant, nor its successors or assigns, shall be bound to make such additions.

Such additions shall be made by recording in the Cattaraugus County Clerk's Office a supplemental Declaration with respect to the additional areas, which shall extend the scheme of the Declaration to such areas.

SECTION 2: Additions to Phase I by the Association and Annexation of additional property by other than Declarant shall require the assent of seventy-five percent (75%) of members, at a meeting duly called for this purpose.

SECTION 3: There shall be no limit on Sponsor, its successors or assigns with respect to the development of the Property, including but not limited to its ability to develop similar single family residential units which may be larger or smaller than the units in this first phase of the Development, multi-family (apartment) rental units, and hotel/motel use.

ARTICLE XIII GENERAL PROVISION

SECTION 1: DURATION & AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by, the Association, or the Owner of any land subject to this Declaration, their respective heirs, successors and assigns, for a period of thirty (30) years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by the Owners of seventy-five percent (75%) of the Lots has been recorded, agreeing to change such covenants and restrictions, in whole or part.

This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than eighty percent (80%) of the Owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the Owners. Any amendment(s) must be recorded in the Cattaraugus County Clerk's Office to become effective. Any amendment that changes any part of the Town of Ellicottville Planning Board approval or conditions of that approval are subject to and conditioned on prior approval by the Town of Ellicottville Planning Board.

A copy of any amendment shall be sent to the Town of Ellicottville, Attn: Departments of Building, Engineering and Planning, P.O. Box 650, Ellicottville, New York 14731.

SECTION 2: SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.

SECTION 3: ENFORCEMENT. The Association, or any Owner, shall have the right to enforce by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges, now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Expenses of enforcing the covenants herein contained shall be chargeable to the Owner violating these covenants and the expense so incurred by the Association shall constitute a lien on such Owner's Lot, collectible in the same manner as assessments under the prior provisions hereof.

Dated as of April 18, 2013

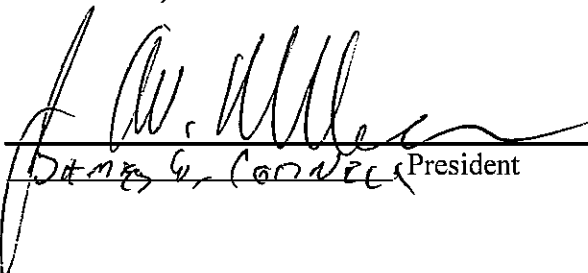
AWSC, LLC, a New York limited liability company

By: **JOSHUA 1:9, LLC**, a New York limited liability company, its Manager

By: 
Mark Balus, its Manager

Dated as of April 18, 2013

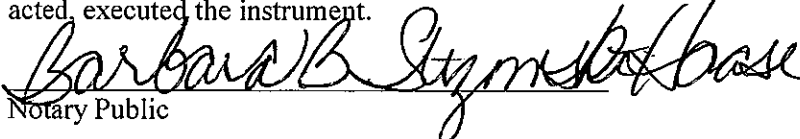
MORNINGSIDE ESTATES HOMEOWNERS ASSOCIATION, INC.

By:  President

STATE OF NEW YORK)

COUNTY OF Ch) ss.:

On the 18 day of April in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared **MARK BALUS** 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 (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

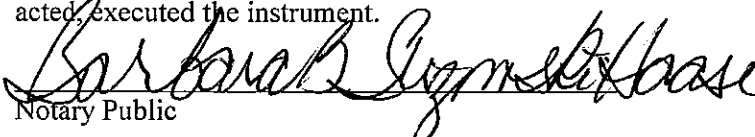

Notary Public

BARBARA B. STRZEMSKI-HAASE
Notary Public, State of New York
Registration No. 02ST6011758
Qualified in Erie County
My Commission Expires Aug. 17, 20 14

STATE OF NEW YORK)

COUNTY OF Ch) ss.:

On the 18 day of April in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared James W. Cornell, on behalf of **MORNINGSIDE ESTATES HOMEOWNERS ASSOCIATION, INC.** 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 (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

BARBARA B. STRZEMSKI-HAASE
Notary Public, State of New York
Registration No. 02ST6011758
Qualified in Erie County
My Commission Expires Aug. 17, 20 14

SCHEDULE A

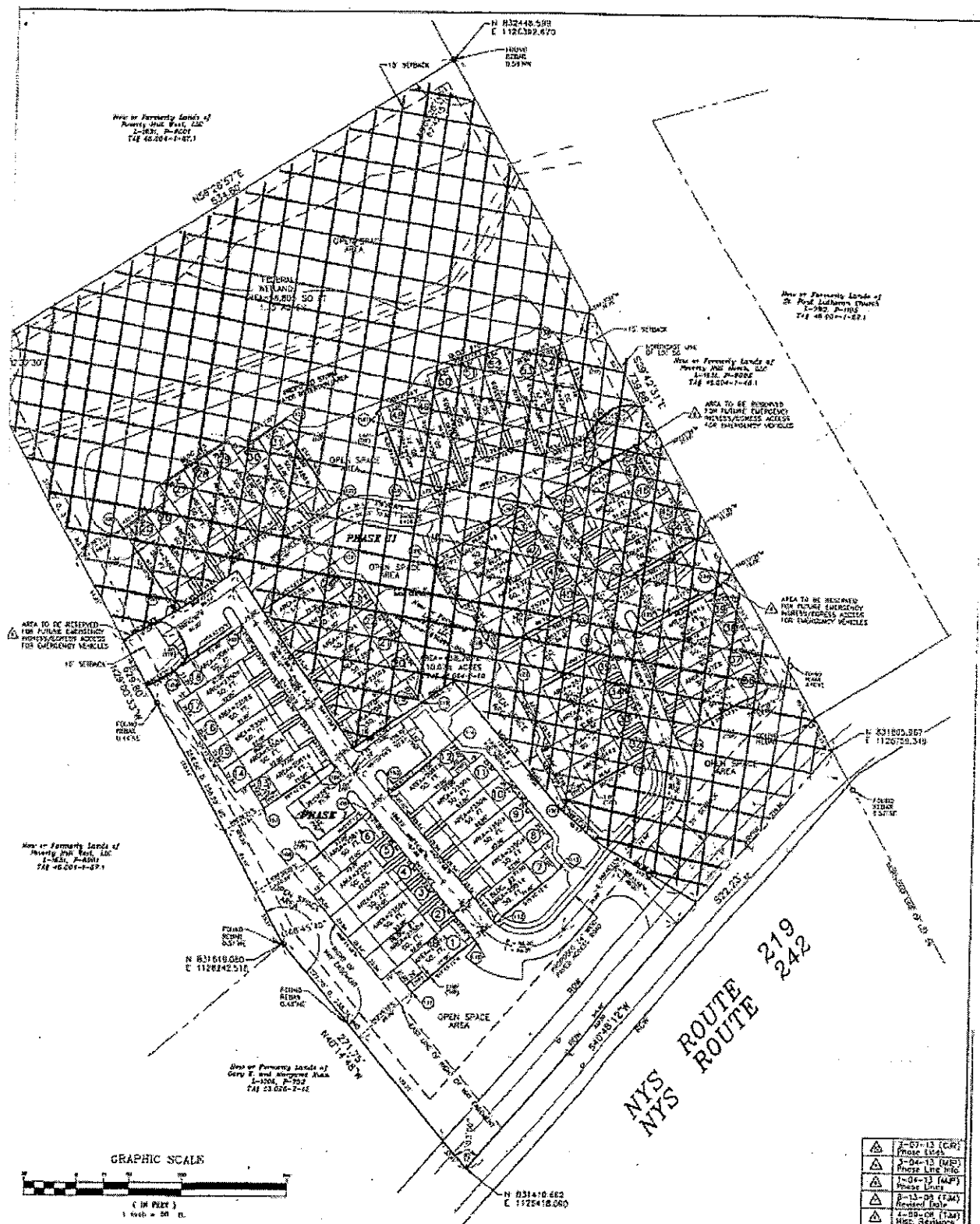
Legal Description

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Ellicottville, County of Cattaraugus, State of New York, and being a part of Lot 56, Township 4, Range 6 of the Holland Land Company's survey and bounded and described as follows:

Beginning at a point in the center line of U.S. Route 219, 522.23 feet southwest of the intersection of said center line with the northeast bounds of said Lot 56; thence northerly 33.6 feet to an iron in the right of way of U.S. Route 219; thence northerly at an interior angle of $81^{\circ} 03'$ with the right of way a distance of 271.75 feet to an iron; thence northerly at an interior angle of $168^{\circ} 45' 45''$ a distance of 256.5 feet to an iron in the easterly bounds of the right of way easement as hereinafter described; thence northerly in the same direction 373.3 feet to an iron; thence easterly at an interior angle of $92^{\circ} 32' 30''$ a distance of 534.6 feet through an iron to an iron in said northeast bounds of said Lot 56; thence at an interior angle of $87^{\circ} 42' 15''$ a distance of 305 feet to an iron; thence in the same direction 411 feet to an iron; thence 23.9 feet to a point in the said center line of U.S. Route 219; thence westerly along the center line of U.S. Route 219 a distance of 522.23 feet to the point of beginning.

SUBJECT TO a right of way easement for highway purposes of 50.62 feet in width in the southwesterly corner of the above described premises as delineated in a map of said premises made by Karol T. Klonowski licensed surveyor and dated March 17, 1964.

SCHEDULE B



SCHEDULE C

Morningside Estates Subdivision

Phase I

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Ellicottville, County of Cattaraugus and State of New York, being part of Lot No. 56, Township 4, Range 6 of the Holland Land Company's Survey, more particularly bounded and described as follows:

BEGINNING at the southwest corner of lands now or formerly conveyed to AWSC, LLC, by Deed recorded in the Cattaraugus County Clerk's Office as Instrument Number 35999-003, dated July 19, 2005, said point being in the centerline of New York State Route 219, distant 522.23 feet southwest of the northeast line of Lot 56, as measured along the said centerline;

thence N 40° 14' 48" W, along the westerly line of said Instrument Number 35999-003, a distance of 271.75 feet to an angle point;

thence continuing along said westerly line of Instrument Number 35999-003, N 29° 00' 33" W, a distance of 324.23 feet to a point;

thence N 60° 59' 27" E, a distance of 57.06 feet to a point;

thence N 55° 42' 02" E, a distance of 69.14 feet to a point;

thence S 34° 17' 58" E, a distance of 201.71 feet to a point;

thence N 55° 42' 02" E, a distance of 113.90 feet to a point;

thence S 40° 21' 27" E, a distance of 154.18 feet to a point;

thence S 49° 37' 23" E, a distance of 45.37 feet to a point;

thence S 60° 28' 29" E, a distance of 115.58 to the said centerline of New York State Route 219;

thence S 40° 48' 12" W along the said centerline of New York State Route 219, a distance of 332.00 feet to the point or place of beginning, containing 128,149 square feet or 2.94 acres of land more or less.

Bearings are referenced to True North at 78°35' meridian of West Longitude.