

**APPENDIX C**  
**Declaration of Covenant and Restrictions**



**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**  
**\*166018-001\***

No. of Pages: 5  
(including this  
cover page)

Receipt No. 166018

Date: 10/06/2011

Time: 09:02 AM

Document Type: MISC RECORD

Parties  
To Transaction: DECLARATION-MACHIAS TOWN

Town/City:

Delivered By:  
TOWN OF MACHIAS

Return To:  
TOWN OF MACHIAS  
3483 ROSZYK HILL ROAD  
MACHIAS NY 14101

**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:

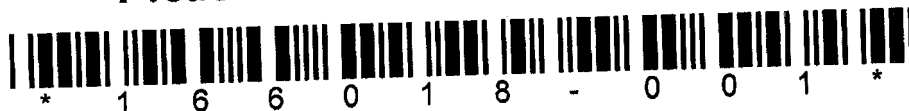
Additional Mortgage Tax:

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

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## DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION is made the 21 day of September, 2011 by the Town of Machias., 3483 Roszyk Hill Road, Machias, New York 14101 ("Declarant").

WHEREAS, Declarant is the owner in fee of a certain parcel of real property ("Property") located on Very Road in the Town of Machias, New York in the County of Cattaraugus, which parcel is part of Lot 38, Township 5, Range 5 of the Holland Land Company's Survey and hereinafter more fully described in Exhibit A.

WHEREAS, the Property is subject to the provisions of Order on Consent # B9-0335-90-05 dated July 25, 1993 and executed by the New York State Department of Environmental Conservation ("Department"), Motorola, Inc, and Declarant.

WHEREAS, the Department required that certain restrictions be placed on the Property owing to environmental impacts associated with past waste storage practices at the Machias Gravel Pit property.

NOW, THEREFORE, Declarant, for itself and its successors and/or assigns, covenants as follows:

First, no person shall engage in any activity that will, or that is reasonably anticipated to prevent or interfere significantly with any proposed, ongoing, or completed remedial program at the Property or that will or is reasonably foreseen to expose the public health or the environment to a significantly increased threat of harm or damage without having first received the prior written express approval of the New York State Department of Environmental Conservation ("NYSDEC") or, if that Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to collectively as the "Relevant Agency";

Second, the use of groundwater beneath the Property as a source of potable or process water is prohibited unless water quality treatment, as determined to be necessary by the New York State Department of Health ("NYSDOH"), is first implemented and only after having given prior notice to and having received the prior written approval of the NYSDEC or other Relevant Agency;

Third, if any building is constructed on the Property, either a soil vapor investigation ("SVI") must be conducted by a NYS-licensed professional engineer and, if any impacts are identified pursuant to the SVI, a soil vapor recovery system must be installed pursuant to NYSDOH and/or NYSDEC laws, regulations or official guidance then in effect to mitigate impacts identified by the SVI or, alternatively, the SVI may be bypassed and a soil vapor recovery system must be installed, subject the aforesaid requirements, to mitigate impacts;

Fourth, the Owner of the Property shall require that any structures or development activity on the Property shall not interfere with or damage any monitoring wells or any other devices installed on the Property as part of any Department approved remedial program;

Fifth, the Owner of the Property shall comply with the requirements of the Record of Decision ("ROD") and the Department-approved Site Management Plan ("SMP") and shall continue in full force and effect any and all institutional and engineering controls the Department required be installed pursuant to the ROD and/or the SMP, including any Department-approved modifications thereto, unless written permission to discontinue such controls has first been received from the Department or other Relevant Agency;

Sixth, the Owner of the Property shall consent to entry upon the Property at all reasonable times by any duly designated officer or employee of the Department or other Relevant Agency and by any agent, consultant, contractor, or other person so authorized by the Commissioner and its contractors to assure compliance with the above restrictions and to implement any remedial program deemed necessary by the Department;

Seventh, the Owner of the Property on behalf of itself and its successors and assigns, hereby consents to the enforcement of the provisions set forth in this Declaration by the Department or other Relevant Agency, but hereby reserves its right to defend itself in any such enforcement action;

Eighth, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the Owner of the Property and its successors and assigns consent to enforcement by the Relevant Agency of the above prohibitions and restrictions and hereby covenant not to contest the authority of the Relevant Agency to seek their enforcement;

Ninth, the Owner of the Property shall comply with Environmental Conservation Law '27-1405 concerning tenant notification of indoor air contamination as long as contaminants are present;

Tenth, any deed of conveyance of the Property shall recite that said conveyance is subject to this Declaration of Covenants and Restrictions;

Eleventh, in accordance with 6 NYCRR Part 375-1.8(h)(3)(i),(ii), the Owner of the Property shall submit an annual written certification by a NYS-licensed professional engineer or such other qualified environmental professional as the Relevant Agency may find acceptable, that the above restrictions have been complied with and remain in place, unless an alternate certification period is approved in writing by the Relevant Agency.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

By: Roy E. Spalk' Dated: Sept. 21, 2011  
Name Printed: Roy E. Spalk' Title: Supervisor

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF CATTARAUGUS

On the 21<sup>ST</sup> day of SEPTEMBER in the year 2011 before me, the undersigned, a notary public in and for said State, personally appeared ROY E. SPALTI personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed this instrument.

Gail L. Watkins  
Notary Public

GAIL L. WATKINS  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN CATTARAUGUS COUNTY  
REG. NO. 01WAG045384  
MY COMMISSION EXPIRES JULY 31, 20 14

Warrantably Deed with Lien Covenant  
Laws of 1917, Chap. 641, Chap. 678, Laws of 1918

280%

David F. Williamson Co., Publishers,  
43 Niagara St., Buffalo, N. Y.

## This Indenture

Made the sixty-four, 4th day of May, Nineteen Hundred and Between

JOHN L. BENZ and ANNE B. BENZ, his wife  
residing on East Avenue (no number) in the Village  
of Springville, Town of Concord, County of Erie and  
State of New York, parties of the first part, and

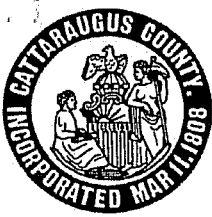
TOWN OF MACHIAS, a municipal corporation in the County  
of Cattaraugus, Machias, New York,

part y of the second part.

Witnesseth, that the said parties of the first part, in consideration of  
One and more (\$1.00 + ) lawful money of the United States, Dollars,  
paid by the part y of the second part, do hereby grant  
and release unto the part y of the second part, its successors and assigns forever,

All that Tract or Parcel of Land, situate in the Town of Machias, County  
of Cattaraugus and State of New York, being part of lot No. 38, Town-  
ship 5 and Range 5 of the Holland Land Company's Survey, described  
as follows:

BEGINNING at a point in the westerly line of lands owned by Edwin J. Sisson, which line is also the easterly line of lands conveyed by said Sisson to Glen C. and Mabel O. Sisson by deed recorded in the Cattaraugus County Clerk's Office in Liber 400 of Deeds at page 247, said point being distant 1633.92 feet northerly measured along said line from the south bounds of Lot No. 38; thence northerly, parallel to the west bounds of said lot and along the easterly line of Glen Sisson, and westerly line of E.J. Sisson, a distance of 509.10 feet to a corner thereof; thence easterly at an interior angle of 89°35' and parallel to the south bounds of said lot and along the southerly line of land now owned by Harrison Shanks, a distance of 396.66 feet to a corner thereof; thence northerly at an exterior angle of 89°45' parallel to the east bounds of said lot and along the easterly line of said Shanks, a distance of 834.90 feet to a point in the centerline of the Very Road; thence southeasterly at an interior angle of 78°30' along the centerline of said road and along the northerly line of E.J. Sisson a distance of 530.50 feet to an angle in the said road; thence southeasterly at a deflection angle to the right of 29°33' and along the centerline of said road and northerly line of said Sisson a distance of 573.20 feet to the northeasterly corner of lands owned by E.J. Sisson; thence southwesterly at an interior angle of 110°23' and along the westerly line of lands now owned by D.Y. Very a distance of 319.30 feet to an angle in said line; thence southerly at an exterior angle of 159°30' and parallel to the east bounds of said lot and along the westerly line of said Very a distance of 710.60 feet to a point; thence northwesterly at an interior angle of 83°10' and running through the lands of E.J. Sisson a distance of 1246.80 feet to the place of beginning, containing 30.73 acres of land be the same more or less.



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

\*167012-001\*

No. of Pages:  
(including this  
cover page)

5

Delivered By:

KPRG & ASSOCIATES

Receipt No.

167012

Return To:

KPRG & ASSOCIATES  
414 PLAZA DR, STE 106  
WESTMONT IL 60559

Date:

10/26/2011

Time:

01:04 PM

Document Type:

RESTRICTIVE COVENANTS

Parties

To Transaction:

ISCHUA CREEK HOLDING CO INC

Town/City:

Deed Information

Mortgage Information

Taxable Consideration:

Taxable Mortgage Amount:

State Transfer Tax:

Basic Mortgage Tax:

Special Mortgage Tax:

RETT No.:

Additional Mortgage Tax:

State of New York  
Cattaraugus County Clerk

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.***



## DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION is made the 12 day of October, 2011 by Ischua Creek Holding Company, Inc., 4000 Commercial Avenue, Northbrook, Illinois 60062 ("Declarant").

WHEREAS, Declarant is the owner in fee of a certain parcel of real property ("Property") located on Very Road in the Town of Machias, New York in the County of Cattaraugus, which parcel is part of Lot 38, Township 5, Range 5 of the Holland Land Company's Survey and hereinafter more fully described in Exhibit A attached hereto and made a part hereof.

WHEREAS, the Property is subject to the provisions of Order on Consent # B9-0335-90-05 dated July 25, 1993 and executed by the New York State Department of Environmental Conservation ("Department"), the Town of Machias, and Declarant.

WHEREAS, the Department required that certain restrictions be placed on the Property owing to environmental impacts on it from the Machias Gravel Pit.

NOW, THEREFORE, Declarant, for itself and its successors and/or assigns, covenants as follows:

First, no person shall engage in any activity that will, or that is reasonably anticipated to prevent or interfere significantly with any proposed, ongoing, or completed remedial program at the Property or that will or is reasonably foreseen to expose the public health or the environment to a significantly increased threat of harm or damage without having first received the prior written express approval of the New York State Department of Environmental Conservation ("NYSDEC") or, if that Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to collectively as the "Relevant Agency";

Second, the use of groundwater beneath the Property as a source of potable or process water is prohibited unless water quality treatment, as determined to be necessary by the New York State Department of Health ("NYSDOH"), is first implemented and only after having given prior notice to and having received the prior written approval of the NYSDEC or other Relevant Agency;

Third, if any building is constructed on the Property, either a soil vapor investigation ("SVI") must be conducted by a NYS-licensed professional engineer and, if any impacts are identified pursuant to the SVI, a soil vapor recovery system must be installed pursuant to NYSDOH and/or NYSDEC laws, regulations or official guidance then in effect to mitigate impacts identified by the SVI or, alternatively, the SVI may be bypassed and a soil vapor recovery system must be installed, subject the aforesaid requirements, to mitigate impacts;

Fourth, the Owner of the Property shall require that any structures or development activity on the Property shall not interfere with or damage any monitoring wells or any other devices installed on the Property as part of any Department approved remedial program;

65.00



Fifth, the Owner of the Property shall comply with the requirements of the Record of Decision ("ROD") and the Department-approved Site Management Plan ("SMP") and shall continue in full force and effect any and all institutional and engineering controls the Department required be installed pursuant to the ROD and/or the SMP, including any Department-approved modifications thereto, unless written permission to discontinue such controls has first been received from the Department or other Relevant Agency;

Sixth, the Owner of the Property shall consent to entry upon the Property at all reasonable times by any duly designated officer or employee of the Department or other Relevant Agency and by any agent, consultant, contractor, or other person so authorized by the Commissioner and its contractors to assure compliance with the above restrictions and to implement any remedial program deemed necessary by the Department;

Seventh, the Owner of the Property on behalf of itself and its successors and assigns, hereby consents to the enforcement of the provisions set forth in this Declaration by the Department or other Relevant Agency, but hereby reserves its right to defend itself in any such enforcement action;

Eighth, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the Owner of the Property and its successors and assigns consent to enforcement by the Relevant Agency of the above prohibitions and restrictions and hereby covenant not to contest the authority of the Relevant Agency to seek their enforcement;

Ninth, the Owner of the Property shall comply with Environmental Conservation Law '27-1405 concerning tenant notification of indoor air contamination as long as contaminants are present;

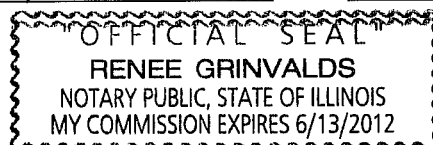
Tenth, any deed of conveyance of the Property shall recite that said conveyance is subject to this Declaration of Covenants and Restrictions;

Eleventh, in accordance with 6 NYCRR Part 375-1.8(h)(3)(i),(ii), the Owner of the Property shall submit an annual written certification by a NYS-licensed professional engineer or such other qualified environmental professional as the Relevant Agency may find acceptable, that the above restrictions have been complied with and remain in place, unless an alternate certification period is approved in writing by the Relevant Agency.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

By: [Signature] Dated: 10/12/11, 2011  
Name Printed: Edward J Fitzpatrick Title: Exec VP, CFO

STATE OF ILLINOIS )  
 ) ss.:  
COUNTY OF Cook )



On the 12<sup>th</sup> day of October in the year 2011 before me, the undersigned, a notary public in and for said State, personally appeared Edward J. Fitzpatrick personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed this instrument.

[Signature]  
Notary Public

(Suggested Description)

Job No. 5661

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Machias, County of Cattaraugus, State of New York, and being part of Lot 38, Township 5, Range 5 of the Holland Land Company Survey (so-called), bounded and described as follows:

BEGINNING AT A POINT on the east line of Lot 38 at a distance of 530 feet, more or less, southerly measured along the east line of Lot 38 from the northeast corner thereof; said point being also the intersection of the east line of Lot 38 and the centerline of Ischua Creek;

RUNNING THENCE: Southerly, along the east line of Lot 38, a distance of 605 feet, more or less, to the centerline of a creek;

RUNNING THENCE: Southwesterly, along the centerline of a creek, a distance of 911 feet, more or less, to a point on a southeasterly line of lands conveyed to Ischua Creek Holding Company, Inc. by deed recorded in the Cattaraugus County Clerk's Office in Liber 918 of Deeds at Page 34;

RUNNING THENCE: Southwesterly, along a southeast line of said Ischua Creek Holding Company, Inc. lands, a distance of 183 feet, more or less, to the centerline of Very Road;

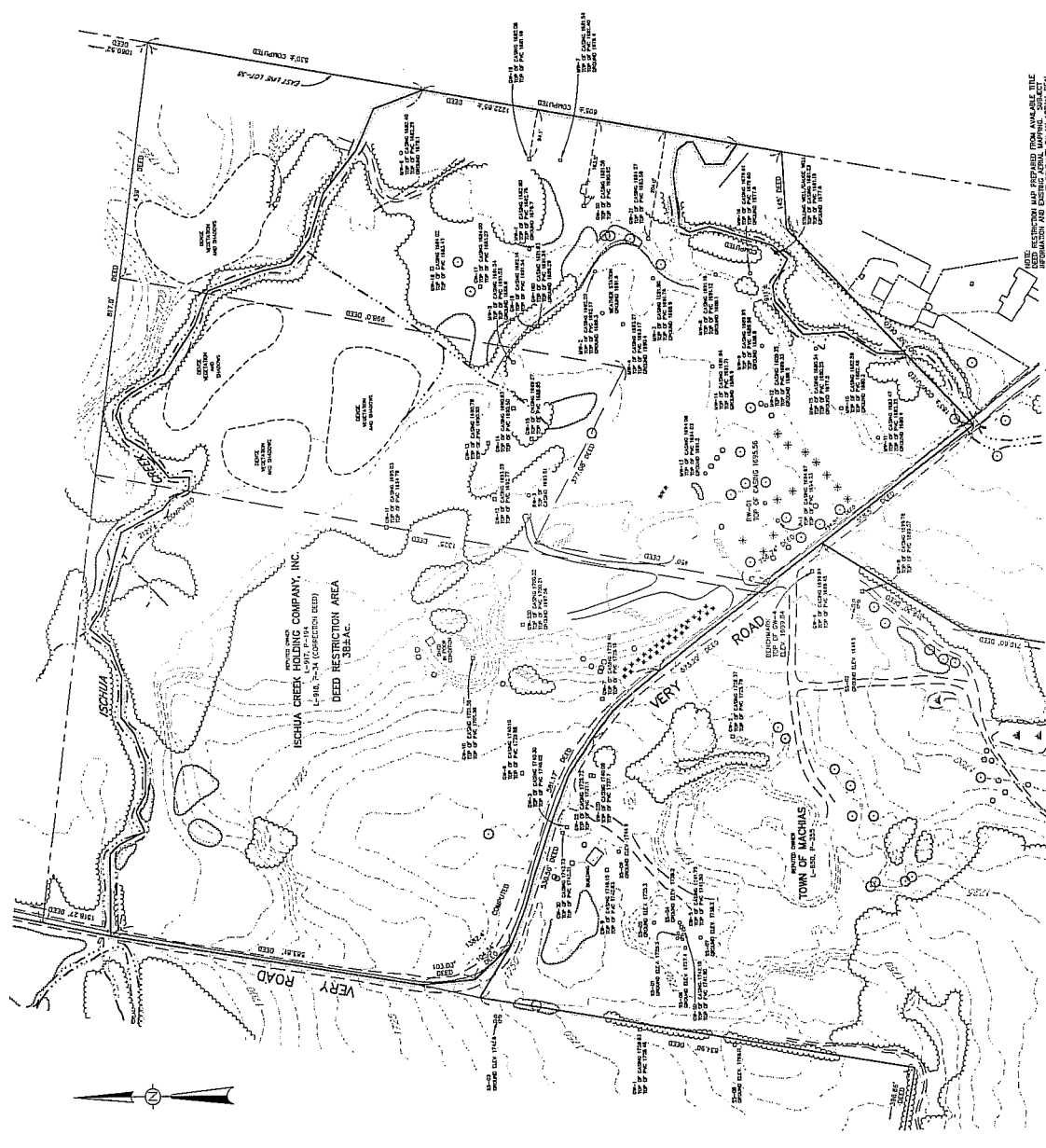
RUNNING THENCE: Northwesterly, at an interior angle of  $84^{\circ}-22'-20''$  with the last described line, and along the centerline of Very Road, a distance of 756.74 feet to a point;

RUNNING THENCE: Westerly and northerly, along the centerline of Very Road, a distance of 1382.4 feet, more or less, to the centerline of Ischua Creek;

RUNNING THENCE: Northeasterly and southeasterly, along the centerline of Ischua Creek, a distance of 2129 feet, more or less, to the POINT OR PLACE OF BEGINNING, be the same, more or less.

SUBJECT to easements, rights-of-way and restrictions of record.

SUBJECT to the rights of the public in and to that portion of the above described land which lays within the bounds of Very Road.



THIS DEED RESTRICTION MAP PREPARED FROM AN AVAILABLE TITLE TO THE STATE OF MICHIGAN BY AN ACTUAL REAL PROPERTY SURVEY.

HERE ELEVATIONS SHOWN IN FEET APPROXIMATE

CONTOUR INTERVAL: 5 FEET

MCINTOSH & MCINTOSH, P.C.  
 420 PINE STREET, LYNNWOOD, NEW YORK, 10994  
 PHONE 435-5853

DEED RESTRICTION MAP OF PART OF LOT-38, TWP-5, R.-5, HOLLAND PURCHASE  
 LOCATION: TOWN OF MICHIGAN, CATARAUGUS COUNTY, NEW YORK

308 No. 5851-DR(4) SCALE: 1" = 100' DATE: MAY 6, 2011

NO.	DESCRIPTION	RECORD NO.
1	MCINTOSH & MCINTOSH, P.C. 308 No. 5851-DR(4) SCALE: 1" = 100' DATE: MAY 6, 2011	

1. This map was prepared solely by photogrammetric methods, from 1:24,000 aerial photography taken on April 15, 1998. The user of this survey and restriction map requires their verification. The outline of all buildings, boundaries, and other features are shown as they appear on the aerial photography. No field verification was conducted.
2. Building structures can be expected to be 1/2" one half inch of contour interval.
3. The contours are shown as they appear on the aerial photography. No field verification was conducted.
4. The contours are based on contour lines shown on the aerial photography. They are not based on a ground survey.
5. The map is a reproduction of a map prepared by McIntosh & McIntosh, P.C. on May 6, 2011. The map is a reproduction of a map prepared by McIntosh & McIntosh, P.C. on May 6, 2011. The map is a reproduction of a map prepared by McIntosh & McIntosh, P.C. on May 6, 2011.

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