

McCULLOUGH, GOLDBERGER & STAUDT, LLP

Attorneys at Law

1311 Mamaroneck Ave., Suite 340, White Plains, NY 10605

TEL (914) 949-6400 FAX (914) 949-2510

mcculloughgoldberger.com

LINDA B. WHITEHEAD

Partner

lwhitehead@mgslawyers.com

**MEMORANDUM
ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

To: Town of North Castle Planning Board

From: Linda B. Whitehead, Esq.

Date: January 19, 2024

Re: 11 Whippoorwill Lane

BACKGROUND

As the Board is aware, I have been retained as special counsel to the Planning Board to review the legal issues relating to the legality of the lot at 11 Whippoorwill Lane (Tax ID #107.04-1-5, hereinafter, "Lot 5") and rights of access thereto. Lot 5 is an unimproved parcel of land which is adjacent to 9 Whippoorwill Lane (Tax ID #107.04-1-, hereinafter "Lot 6") to the south, and 9 Stone Hollow Way (Tax ID #107.01-1-1, hereinafter "Lot 1") to the north. Lot 1 has a "flag lot" shape, with a strip of land running north to south along the eastern border of Lots 5 and 6. This strip of land shall be referred to as the "Stone Hollow Strip". The Stone Hollow Strip is partially improved with a paved roadway that provides access to Lot 6, and a dirt road that reaches Lot 5.

My original analysis was provided to the Board in my memorandum dated September 22, 2023, which indicated Lot 5 is a legal non-conforming lot with a legal frontage on a mapped road and a right of access over Whippoorwill Lane and the Stone Hollow Strip. That memorandum should be reviewed in conjunction with the additional information provided herein, and the conclusions there in are summarized here.

As the Board will recall, Lot 5 and all the surrounding parcels, including Whippoorwill Lane, were created by the Whippoorwill Corporation (the "Corporation") in accordance with the filing of Map #3585, attached herewith as **Exhibit A**. Lot 5 and Lot 6 are shown on this map as lots K-4 and K-5, respectively. The area which is now the Stone Hollow Strip (and more) is shown on this map as "Road K" and runs along the easterly side of Lots 5 and 6. Map #5386, attached hereto as **Exhibit B**, was subsequently filed with Westchester County in 1941, and shows what is now Whippoorwill Lane

extending to the end of Road K from Whippoorwill Road. One correction to my prior memorandum is that Map #3585 does not indicate it was approved by the North Castle Planning Board. We have looked into this issue and as discussed below determined that the Town of North Castle did not have a Planning Board in 1931, and therefore the map was approved only by the New Castle Planning Board (a portion of the property shown on the map was in the Town of New Castle, which did have a Planning Board at the time).

The September 22nd memorandum further established the rationale for a determination that the Lot owner has the right to improve the portion of the Stone Hollow Strip in accordance with the proposed plans before this Board. Of note, this initial memo indicated that:

- a) The Lot has a right of access over the Stone Hollow Strip and the right to improve same to provide such access by virtue of the Lot being shown on a filed plat fronting on the mapped street which includes the Stone Hollow Strip.
- b) The Lot has frontage on a street on a filed map, satisfying the requirements of New York Town Law §280-a, provided the Planning Board determines the Stone Hollow Strip to be suitably improved.
- c) The Lot has a right of access over Whippoorwill Lane to the Stone Hollow Strip.

Subsequently, the Board received a letter from Mr. Matthew Mayers, who resides at 7 Whippoorwill Lane, dated November 7, 2023 (the “Mayers Letter”). In his correspondence, Mr. Mayers makes a number of assertions and raises several issues questioning the Applicant’s ability to access and develop Lot 5.

It is my opinion that these issues are either not applicable or have been incorrectly applied to this matter. It is the intent of this memorandum to address Mr. Mayer’s assertions, as set forth in detail below, following the items in the Analysis section of his letter.

ANALYSIS

Assertion 1: The Lot Does Not Have Access to a Duly Filed Mapped Street

A. Mapping of the Street

It is Mr. Mayer’s contention that the “paper street” depicted in both a filed subdivision plat and the County GIS is not a valid street for purposes of compliance with Town Law. Specifically, he alleges that Map #3585, which created the original lots as well as Road K, was never approved by the North Castle Planning Board, and is therefore invalid.

It appears that in fact the North Castle Planning Board did not exist in 1930, when the subdivision was originally approved and therefore no such approval was required. It is important for this purpose to take into consideration the definition of “Street” in both the Town of North Castle Subdivision Code and Zoning Code. The Subdivision Chapter of the Code defines “Street” as, “An existing state, county or Town road or highway, a street shown upon a plat approved by the Planning Board **or a street shown**

on a plat duly filed and recorded in the office of the County Clerk prior to 1941.” North Castle Code §275-29 (emphasis added). This appears to be a clear indication that the Planning Board did not exist prior to 1941 and therefore that streets shown on filed maps prior to that date are considered “Streets” for the purpose of satisfying the conditions of the Subdivision Code. The Zoning Code similarly defines “Street” as “An existing state, county or Town highway, or a way shown upon a subdivision plat approved by the Town Planning Board, as provided by law, **or on a plat duly filed and recorded in the office of the County Clerk prior to the appointment of the Town Planning Board and the grant to such Board of the power to approve subdivision plats.**” North Castle Code §355-4 (emphasis added). Each of these definitions acknowledge that the Town has streets shown on maps approved before the existence of the Planning Board prior to 1941.

Map #3585 was duly filed with the Westchester County Clerk in 1930, well before 1941. As such, Road K is depicted on a “plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board” and is therefore a “Street” as defined by the North Castle Subdivision Ordinance and Zoning Code and a street or highway as contemplated by Town Law § 280-a. By virtue of Lots 5 and 6 being shown as fronting on Road K on the filed map, the lots have a right of access over what is now Road K.

The case law is clear that, “An owner of land adjoining a highway or street possesses, as an incident to such ownership, easements of light, air and access, from and over the highway in its entirety to every part of his or her land, regardless of whether the owner owns the fee of the highway or street itself.” Matter of Scoglio v County of Suffolk, 85 NY2d 709, 712 [Ct App 1995]. This is true even when the road is only a paper street. Matter of Ken Mar Dev., Inc. v Dept. of Pub. Works of City of Saratoga Springs, 53 AD3d 1020, 1022 [3d Dept 2008](citing Perlmutter v Four Star Dev. Assoc., 38 AD3d 1139, 1140 [3d Dept 2007]).

B. “De-Mapping” Assertion

Mr. Mayers argues in a footnote that Map #19840 supersedes Map #3585. He further contends that because the more recent map does not depict Road K, Road K was effectively eliminated. However, there is nothing in Map #19840 that states prior rights of access have been extinguished, nor does it appear that the owners of Lots 5 and 6 at the time were a party to the subdivision application¹.

Map #19840 was filed long after Lot 5 was conveyed by the Corporation. Any rights vested in the owner of Lot 5 by being shown as a lot fronting on a road on a prior map cannot be extinguished by the North Castle Planning Board or by an adjacent property owner without the consent of the Lot 5 owner. Moreover, Map #19840 does not show any alternative access for Lot 5 or 6 that could be seen as replacing the access provided via Road K.

C. Abandonment Assertion

The Mayers Memo claims again in a footnote that the paper street and any easement rights associated therewith were abandoned by virtue of the fact that there is no evidence that “the Stone Hollow Strip or any of Road K was ever used as a road since 1930.” This is factually inaccurate as there is currently a paved roadway within a portion of the Road K/Stone Hollow Strip, which serves Lot 6.

¹ Lots 5 and 6 are shown as “Land Now or Formerly Donad & Edith Jacobson”. This land is not identified as one of the enumerated subdivision lots with access to Stone Hollow Way.

It is also an inaccurate representation of the relevant law. Abandonment of an easement occurs only when the easement holder's non-use is combined with a clear intention to abandon the easement. "[A]bandonment does not result from nonuse alone, no matter how long, inasmuch as owners are not required to make use of their property." Janoff v Disick, 66 AD3d 963, 966 [2d Dept 2009]. Intention to abandon must be demonstrated by "clear and convincing proof . . . The acts relied upon must be unequivocal, and must clearly demonstrate the owner's intention to permanently relinquish all rights to the easement." Consol. Rail Corp. v MASP Equip. Corp., 67 NY2d 35, 40 [Ct App 1986].

Lot 5 has never been developed, and no alternative access has been established to Lot 5 that would indicate any intention to abandon previously granted easement rights and no document exists evidencing an intent by any owner of lot 5 to abandon Road K or its rights of access over Road K.

Mr. Mayers also generally references Real Property Law § 560 when discussing abandonment. This provision of law requires a deliberate action on the part of a property owner to disclaim and abandon a subdivision, merging the subdivided lots together. For reference, the relevant portion of this statute states,

*Whenever more than five years has elapsed after the subdivision of any tract of land into lots, plots or sites, with or without proposed streets, the owner of such tract or any part thereof composed of two or more contiguous lots may, **by an instrument in writing**, duly executed and acknowledged, describing such land, disclaim and abandon such subdivision including any streets not opened, accepted or used by the public and which are not necessary for the use of an owner or occupant of any part of such tract. (emphasis added)*

To our knowledge, no such written instrument was filed by any owner of Lot 5 or the adjacent lots. Barring such an instrument, this claim of abandonment is inaccurate.

Assertion 2: The Lot Has No Right to Improve the Stone Hollow Strip

My previous Memo stated, "When a lot is shown fronting on a street on a filed plat or map, as in this case, the lot is considered to have a right of access over the mapped street, and the right to improve the mapped street to provide access." Mr. Mayers contends that this is inaccurate and is not supported by law.

I have cited to the cases above which clearly establish that the owner of land adjoining a mapped highway or street has an easement over the entirety of such street even if it is an unimproved paper street owned by another party, and has the right to use such street for access to its property.

Mr. Mayers also states that the Westchester County GIS, which is based on tax maps filed by the municipality with the County, does not depict any paper street. This is inaccurate, as the GIS clearly shows a mapped street extending from the Stone Hollow cul-de-sac past 11 and 9 Whippoorwill Lane out to Whippoorwill Road. This area of the GIS map is enclosed herewith as **Exhibit C**.

Assertion 3: The Easement and Release Agreement Does Not Provide the Right to Pave the Easement Area

As discussed above, the owner of Lot 5 has a right of access over Road K, which right of access must obviously include the right to improve such street to provide access. Although this right already

existed, the owner of Lot 1 and the prior owner of Lot 5 entered into an Easement and Release Agreement, dated December 14, 2021. The owner of Lot 1 was clearly benefiting from this document as the owner of Lot 5 agreed to release any right to the portion of Road K which would most significant impact Lot 1. Despite Road K already being shown on Map #3585, the Easement and Release Agreement established pedestrian and vehicular ingress and egress rights for the owner of Lot 5 over a portion of Lot 1, comprising a portion of the Stone Hollow Strip, to provide for access to Lot 5 extending from the access over the Stone Hollow Strip already improved for access to Lot 6. Mr. Mayers contends that this right is limited and does not include the right to pave within the Easement Area. Rather, it is his belief that this Agreement is limited to improvement to/maintenance of the existing dirt road.

The case law cited by Mr. Mayer is not entirely relevant to the issue at hand. Specifically, Mr. Mayers relies on the Fourth Department case Tarsel v Trombino, 167 AD3d 1462 [4th Dept 2018]. However, the arguments of the servient estate in that matter were specifically tied to anticipated environmental impacts from paving within an easement area, specifically a concern of increased water pooling on their property. To my knowledge, no such argument of impact has been made by the owner of Lot 1, and the Planning Board, as part of any approval, can and will review the issues of stormwater management as well as any other impacts of the proposed improvement of Road K for access.

Mr. Mayers failed to note in his letter that the Court was clear in its decision to grant the burdened land owner's motion to dismiss that, "Defendant thus failed to establish that he had a right to remove the improvement because the improvement would have imposed a burden on his property in the manner that he described." Tarsel at 1465.

Mr. Mayers further argues, "[I]f the parties intended to give the Lot the right to pave the Easement Area, they would have done so directly." Of course, the inverse of this argument can also be made, which is to say that if the parties wished to prohibit paving, they would have stated such a prohibition directly in the Easement and Release Agreement. As it stands, the Agreement is silent on this issue, and generally grants "a perpetual non-exclusive easement for pedestrian and vehicular ingress and egress over and across the Easement Area."

The courts have found that where the wording of an easement is not clear, "the terms of the grant are to be construed most strongly against the grantor in ascertaining the extent of the easement." Vil. of Dobbs Ferry v Landing on the Water at Dobbs Ferry Homeowners Assn., Inc., 198 AD3d 840 [2d Dept 2021]; Venables v Rovegno, 195 AD3d 876 [2d Dept 2021] (quoting Ledley v D.J. & N.A. Mgt., Ltd., 228 AD2d 482 [2d Dept 1996]). Even the case law cited by Mr. Mayers establishes that, "A party's right of passage over an easement carries with it the 'right to maintain it in a reasonable condition for such use.'" Tarsel at 1463 (citing Ickes v Buist, 68 AD3d 823, 824 [2d Dept 2009]). A reasonable condition for access would include paving for a safe and adequate access.

It should also be noted that interpretation of a private agreement is not within the jurisdiction of the Planning Board.

Assertion 4: The Lot Does Not Have Right of Access Over Whipoorwill Lane

As noted previously, Lot 5 was conveyed by the Corporation to Walter N. Ruth in 1932 by deed recorded at liber 3276 page 76 (the "Ruth Deed"), which was included as an attachment in my previous memorandum. The Ruth Deed provides, "an easement for ingress to and egress from the premises above described over and along such private roads as now or may hereafter exist connecting the said premises with the public highways."

The Ruth Deed also states that, “All rights and easement of access, implied or expressed, to the property herein conveyed shall be limited by and subject to such rules, regulations and restrictions governing the manner of use, or the persons licensed or permitted to use the same, as shall from time to time be adopted or prescribed by Grantor, its successors or assigns.”

As discussed previously, Map #5386, filed with the County Clerk in 1941, shows what is now Whippoorwill Lane extending up to the end of Road K from Whippoorwill Road. The previously provided agreement between Whippoorwill Realty Co. Inc.² and Reggie Morgan Lulejian (the “Lulejian Agreement”) refers to the road on map #5386, and acknowledges that Whippoorwill Realty Co. is the owner of said road. Therefore, this right of way was clearly part of property owned by the Corporation and would have been one of the “private roads as now or may hereafter exist connecting the said premises with the public highways”, over which Lot 5 would have a right of ingress and egress.

Mr. Mayers points out that the Lulejian Agreement includes the following language:

[T]he party of the first part hereby covenants and agrees that the parcel of land shown on the above described survey as a 50 foot right of way shall be burdened with an easement or right of way in favor of the owners of the premises adjoining said 50 foot strip of land, or any successors in ownership thereof, for the purpose of ingress and egress to and from the adjoining properties.

It is his assertion that this provision represents a limitation to the access rights as contemplated in the Ruth Deed, such that only land owned immediately adjacent to 7 Whippoorwill Lane may utilize this portion of Whippoorwill Lane for ingress and egress.

This is an incorrect interpretation of basic easement rights. It is true that the Ruth Deed contemplates the potential establishment of “rules, regulations, and restrictions,” but there is nothing in the document that would allow the Grantor to eliminate the established right of access altogether. There is no indication in the Ruth Deed that the easement established therein was intended to be revocable.

In fact, The Ruth Deed Ruth Deed clearly states, “The Grantor reserves for itself, its successor and assigns, change the location, route or grade of said roads from time to time, *provided that such change shall not prevent reasonably convenient and adequate access to the premises herein conveyed nor unreasonably lengthen the distance to be traveled to reach such public highways.*” (emphasis added)

It is clear that it was the intent of the parties to establish a perpetual easement and right of access benefitting Lot 5 for reasonable access. It is also noted that it has been long been established New York case law that there is no requirement that the dominant and servient estates be contiguous to establish an easement appurtenant to land. Cady v Springville Water-Works Co., 134 NY 118, 121 [Ct App 1892]; Reiss v Maynard, 170 AD2d 992, 992 [4th Dept 1991].

Mr. Mayers also makes reference to the Town’s Subdivision Ordinance, Chapter 275 of the North Castle Code, in Footnote 10 of the Mayers Letter, inferring that Whippoorwill Lane, as a private road, is required to dead end, and that the number of residents fronting on Whippoorwill Lane is limited. To be clear, the present application does not require Subdivision approval, and therefore the requirements of the Subdivision Ordinance are not relevant or applicable to this application. No new street is proposed to be created, as both Whippoorwill Lane and Road K were previously approved and duly mapped.

² Whippoorwill Realty Co. was a successor in interest to the Corporation, having taken over its assets after the Corporation filed for bankruptcy in 1934.

Assertion 5: No Continuous Road

Mr. Mayers claims that neither the GIS nor a duly filed map show a continuous road from the Stone Hollow Way cul-de-sac to Whippoorwill Lane. As noted above, that is a false assertion, as the GIS map does depict a road from the cul-de-sac all the way to Whippoorwill Lane. Additionally, Map #3585 shows Road K, which encompasses the distance from the cul-de-sac to Whippoorwill Lane. Map #5386 also shows what is now Whippoorwill Lane extending to the end of Road K. See Exhibits A and C.

Assertion 6: Right of Access Over Whippoorwill Lane Is Not Required

Mr. Mayers argues that Lot 5 has access rights from the Stone Hollow Way cul-de-sac. Whether the Applicant may have that right is not an issue before this Board, as no such access is proposed by the Applicant. The question at issue is whether the Applicant may make use of Road K to access Lot 5 from Whippoorwill Lane.

Assertion 7: 9 Whippoorwill Lane Has Different Rights Than 11 Whippoorwill Lane

The Mayers Letter argues that Lot 6 is permitted to use Whippoorwill Lane for access because it is adjacent to Whippoorwill Lane, in accordance with the terms of the Lulejian Agreement. As noted above, I do not believe the Lulejian Agreement prohibits Lot 5’s use of Whippoorwill Lane.

Mr. Mayers makes the assertion that the current application must be treated differently by virtue of the fact that the owner of Lot 1 is objecting to pavement of the Stone Hollow Strip whereas they did not object to the access and paving for access to Lot 6. However, the rights of the owner of Lot 5 (and Lot 6) do not depend upon “permission” of the owner of Lot 1 as is discussed above, but exist by law based upon the filing of Map #3582 and other documents discussed herein. In addition, as noted above, interpretation of the Easement and Release Agreement is not within the jurisdiction of this Board, though there is no language within the Easement and Release Agreement prohibiting pavement to achieve reasonable access.

Assertion 8: The Lot is a Nonconforming Lot That Cannot Legally Be Issued a Building Permit

The Mayers Letter cites Section 355-14.H. of the Town of North Castle Zoning Ordinance, which declares that,

A building permit may be issued for the creation of a structure on a lot or parcel that does not conform to the area, frontage or other dimensional requirements of this chapter only when a valid conveyance has been signed and the conveyance recorded prior to the adoption of this chapter. In addition, the lot must have met the zoning requirements in place at the time the deed to the lot was recorded. All yard setbacks and other requirements which are in effect at the time of the obtaining of the building permit must be complied with, insofar as is feasible. However, if the owner of the lot owns a contiguous lot or lots, then the other lot or lots or so much thereof as may be necessary shall be merged with the nonconforming lot in order to bring that lot into conformance or, to as great an extent as is practical, to reduce or eliminate any nonconformities that may exist on any of the lots. At that time, a building permit may be issued for construction on the newly created lot.

It is noted that both Lot 5 and Lot 6 were in separate ownership and were validly conveyed prior to the adoption of the Zoning Ordinance in 1977.

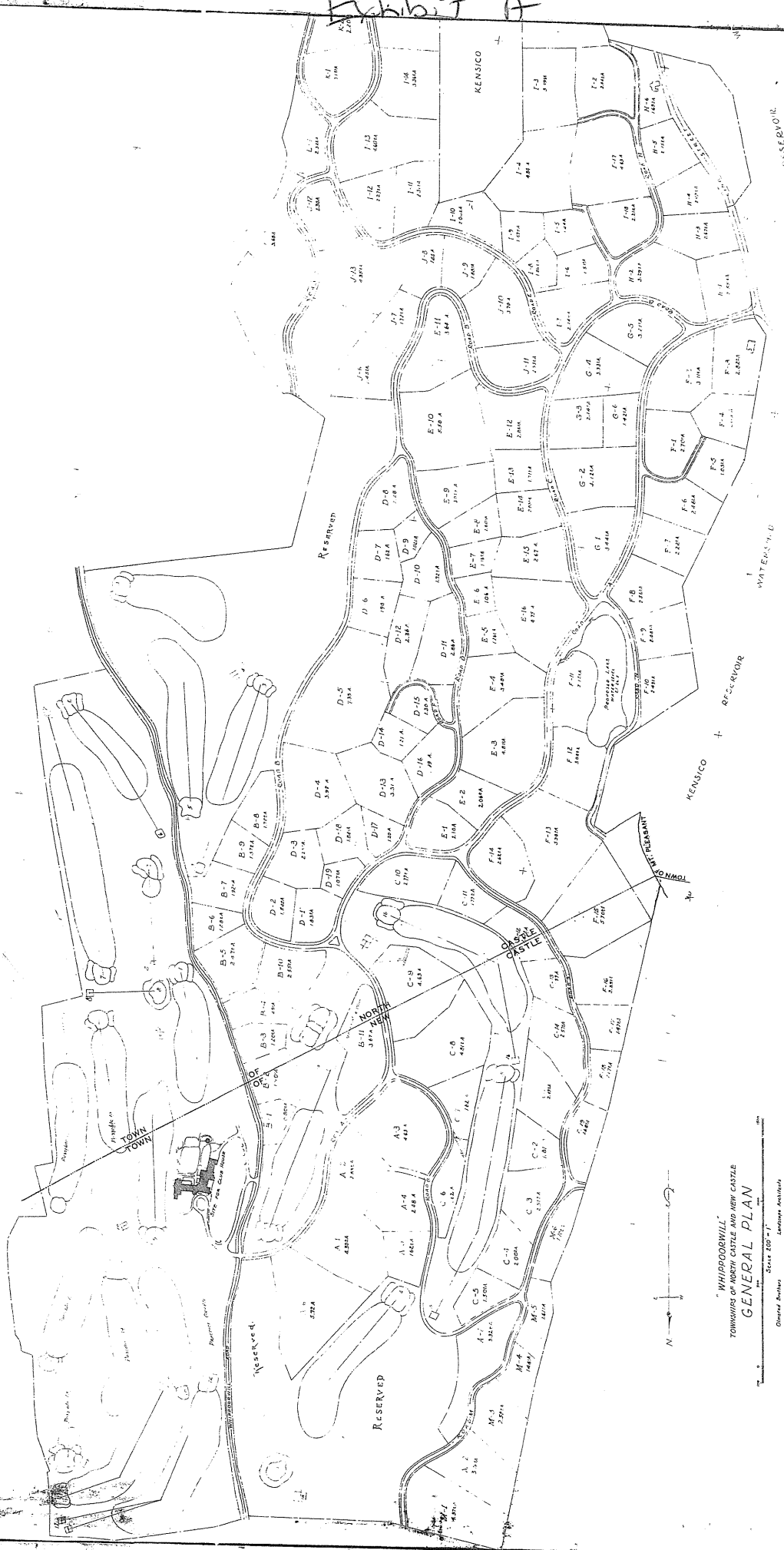
Mr. Mayers argues that Lot 5 and 6 were recently in common ownership and were therefore subject to a required merger in accordance with the foregoing section of the Zoning Ordinance. I have reviewed the deeds to the subject properties. Both the Jacobsons and the Vasconcellos kept Lots 5 and 6 in separate ownership. For the Board's reference, the 2019 deeds for Lots 5 and 6 are attached herewith as **Exhibit D**. As shown therein, Lot 5 was owned by Don and Dale Jacobson as tenants in common, and was conveyed to Priscilla Vasconcello, who later deeded the land to the Applicant. Lot 6 was owned solely by Don Jacobson and was conveyed separately to Rodrigo Vasconcello who recently conveyed Lot 6 to Randolph Randolph. Prior to these deeds, Lot 5 was owned by Edith Jacobson, who acquired title in 1971, and conveyed to Don and Dale Jacobson in 1985. Lot 6 was previously owned by Edith and Don Jacobson who conveyed title to Don Jacobson in 1985. At no time since the adoption of the Zoning Ordinance were these lots in common ownership.

As it appears Lot 5 and Lot 6 have continually been maintained in separate ownership, and each had previously been validly conveyed prior to the adoption of the Zoning Ordinance, the Zoning Ordinance would not preclude issuance of a valid Building Permit for either property, provided all legal and procedural requirements are met.

CONCLUSION

Despite Mr. Mayers' claims, it would appear that the Applicant does have a right of access for Lot 5 on a duly mapped paper street, which is located in the area of the Stone Hollow Strip, which right has not been abandoned or terminated, and which right includes the right to improve the paper street for access. Further, the Applicant may make use of Whippoorwill Lane to reach the Stone Hollow Strip. Additionally, Lot 5 was not subject to a required merger under the North Castle Zoning Ordinance, and may be the subject of a valid Building Permit.

Exhibit A



WHIPPOORWILL
TOWNSHIPS OF NORTH CASTLE AND NEW CASTLE
GENERAL PLAN

Scale 200' = 1"
Date: 4/11/1930

All roads and rights of way, with the exception of the private property of Whippoorwill Corporation, are hereby dedicated to the public use of the town of Whippoorwill, and shall be subject to the provisions of the laws of this State.

Whippoorwill Corporation
Secretary

APR 11 1930

Approved by the Planning Commission
Town of New Castle, WASHINGTON COUNTY
Secretary

Whippoorwill Corporation
Secretary

Filed in the office of the Register
of Washington Co., April 11, 1930.
Register

FOOT

Exhibit C



Exhibit 1

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.



592753144DED0014

Westchester County Recording & Endorsement Page

Submitter Information

Name:	Thoroughbred Title Services, LLC	Phone:	914-644-6100
Address 1:	800 Westchester Avenue	Fax:	914-644-6159
Address 2:	Suite S434	Email:	recording@thoroughbredtitleservices.co
City/State/Zip:	Rye Brook NY 10573	Reference for Submitter:	41094 Vasconcellos

Document Details

Control Number:	592753144	Document Type:	Deed (DED)
Package ID:	2019100200091001001	Document Page Count:	3
		Total Page Count:	4

Parties

Additional Parties on Continuation page

1st PARTY 2nd PARTY

1: JACOBSON DON S	- Individual	1: VASCONCELLOS PRISCILLA V	- Individual
2: JACOBSON DALE G	- Individual	2: VASCONCELLOS PRISCILLA V	- Individual

Property

Additional Properties on Continuation page

Street Address:	11 WHIPPOORWILL LANE	Tax Designation:	107.04-1-5
City/Town:	NORTH CASTLE	Village:	

Cross-References

Additional Cross-Refs on Continuation page

1:	2:	3:	4:
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Supporting Documents

1: RP-5217	2: TP-584
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Recording Fees

Statutory Recording Fee:	\$40.00
Page Fee:	\$20.00
Cross-Reference Fee:	\$0.00
Mortgage Affidavit Filing Fee:	\$0.00
RP-5217 Filing Fee:	\$250.00
TP-584 Filing Fee:	\$5.00
Total Recording Fees Paid:	\$315.00

Mortgage Taxes

Document Date:	
Mortgage Amount:	
Basic:	\$0.00
Westchester:	\$0.00
Additional:	\$0.00
MTA:	\$0.00
Special:	\$0.00
Yonkers:	\$0.00
Total Mortgage Tax:	\$0.00

Transfer Taxes

Consideration:	\$25,000.00
Transfer Tax:	\$100.00
Mansion Tax:	\$0.00
Transfer Tax Number:	5496

Dwelling Type:	Exempt: <input type="checkbox"/>
Serial #:	

RECORDED IN THE OFFICE OF THE WESTCHESTER COUNTY CLERK



Recorded: 11/18/2019 at 01:43 PM
 Control Number: **592753144**
 Witness my hand and official seal

Timothy C. Idoni
Westchester County Clerk

Record and Return To

Pick-up at County Clerk's office

Thoroughbred Title Services, LLC
800 Westchester Avenue
Suite S-514
Rye Brook, NY 10573

41094

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 8th day of November in the year 2019

BETWEEN DON S. JACOBSON as to 99% interest and DALE G. JACOBSON as to a 1% interest, as Tenants in Common 9 Whipoorwill Lane Armonk, New York 10504

party of the first part, and PRISCILLA VENTURA VASCONCELLOS 49 Old Rouring Road Mt. Kisco, New York 10543

party of the second part, WITNESSETH, that the party of the first part, in consideration of

Ten (\$10.00)----- dollars

paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, and more particularly bounded and described as follows:

SEE SCHEDULE "A" ANNEXED HERETO AND MADE PART HEREOF

AND being the same premises acquired by deed from Edith E. Jacobson dated August 14, 1985, and recorded August 21, 1985 in the Office of the Clerk of the County of Westchester as Liber 8192 cp 1.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Don S. Jacobson
DON S. JACOBSON

Dale G. Jacobson
DALE G. JACOBSON

SCHEDULE A (Legal Description)

Title No.: TBT41094

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester, and State of New York, and more particularly bounded and described as follows:

BEGINNING at a stone monument set on the westerly side of a road 40 feet wide, said monument being 572.34 feet east of a point which is 7939.59 feet south of the Whippoorwill Corporation Property Reference Monument (which said "Whippoorwill Road cleared hill at a point approximately 250 feet east of Whippoorwill Road and approximately one-half mile south of the intersection of said road with Wild Cat Road and lies South 86° 25' and 30" East of the U.S. Coast and Geodetic Survey Triangulation Station "Sarles");

AND RUNNING THENCE South, along the westerly side of said road, South 30° East 275 feet to a stake;

THENCE South 88° 35' and 10" West 213.29 feet to a stake marking a point of curve to the right whose radius is 1,073.19 feet and the direction of whose radius at that point is South 88° 35' 20" East;

THENCE northwardly (and following the arc of said curve) 45.01 feet to a stake;

THENCE North 3° 48' 50" East 145.13 feet to a stake marking a point of curve to the left whose radius is 894.57 feet and the direction of whose radius at that point is North 86° 11' 10" West;

THENCE northwardly (and following the arc of said curve) 81.02 feet to a stone monument; and

THENCE North 86° 59' 10" East 200.15 feet to the place of BEGINNING.

FOR
CONVEYANCING
ONLY

The policy to be issued under this report will insure the title to such buildings and improvements erected on the premises which by law constitute real property.

TOGETHER with all the right, title and interest of the party of the first part, of, in and to the land lying in the street in front of and adjoining said premises.

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of Westchester, ss:

On the 8th day of November in the year 2019, before me, the undersigned, personally appeared DON S. JACOBSON and DALE G. JACOBSON

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 the instrument.

[Signature]
Notary Public

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year , before me, the undersigned, a Notary Public in and for said State, personally appeared , the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

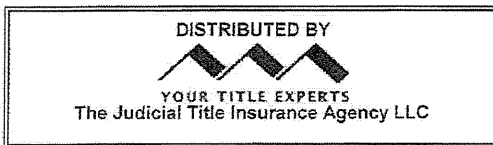
(if the place of residence is in a city, include the street and street number if any, thereof); that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

Bargain and Sale Deed With Covenants

Title No.



ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year , before me, the undersigned, personally appeared

, 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 the instrument.

ROLAND A. BACONI, JR.
Notary Public, State of New York
No. 4872484
Qualified in Westchester County
Commission Expires September 8, 2020

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of , County of , ss:

*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the day of in the year , before me the undersigned personally appeared

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), 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 the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgment was taken).

SECTION: 107.04

BLOCK: 1

LOT: 5

COUNTY OR TOWN: Town of North Castle

RETURN BY MAIL TO:

Thoroughbred Title Services, LLC
800 Westchester Avenue, Suite S514
Rye Brook, NY 10573
914-644-6100

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.



592753105DED0011

Westchester County Recording & Endorsement Page

Submitter Information

Name:	Thoroughbred Title Services, LLC	Phone:	914-644-6100
Address 1:	800 Westchester Avenue	Fax:	914-644-6159
Address 2:	Suite S434	Email:	recording@thoroughbredtitleservices.co
City/State/Zip:	Rye Brook NY 10573	Reference for Submitter:	41093 Rodrigo Vasconcellos

Document Details

Control Number: 592753105	Document Type: Deed (DED)
Package ID: 2019100200069001001	Document Page Count: 3 Total Page Count: 4

Parties

Additional Parties on Continuation page

1st PARTY		2nd PARTY	
1: JACOBSON DON S	- Individual	1: VASCONCELLOS RODRIGO	- Individual
2:		2:	

Property

Additional Properties on Continuation page

Street Address: 9 WHIPPOORWILL LANE	Tax Designation: 107.04-1-6
City/Town: NORTH CASTLE	Village:

Cross-References

Additional Cross-Refs on Continuation page

1:	2:	3:	4:
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Supporting Documents

1: RP-5217	2: TP-584
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Recording Fees

Statutory Recording Fee:	\$40.00
Page Fee:	\$20.00
Cross-Reference Fee:	\$0.00
Mortgage Affidavit Filing Fee:	\$0.00
RP-5217 Filing Fee:	\$125.00
TP-584 Filing Fee:	\$5.00
Total Recording Fees Paid:	\$190.00

Mortgage Taxes

Document Date:	
Mortgage Amount:	
Basic:	\$0.00
Westchester:	\$0.00
Additional:	\$0.00
MTA:	\$0.00
Special:	\$0.00
Yonkers:	\$0.00
Total Mortgage Tax:	\$0.00

Transfer Taxes

Consideration:	\$600,000.00
Transfer Tax:	\$2,400.00
Mansion Tax:	\$0.00
Transfer Tax Number:	5544

Dwelling Type:	Exempt: <input type="checkbox"/>
Serial #:	

RECORDED IN THE OFFICE OF THE WESTCHESTER COUNTY CLERK



Recorded: 11/18/2019 at 03:06 PM
 Control Number: **592753105**
 Witness my hand and official seal

Timothy C. Idoni
Westchester County Clerk

Record and Return To

Pick-up at County Clerk's office

Thoroughbred Title Services, LLC
 800 Westchester Avenue
 Suite S-514
 Rye Brook, NY 10573

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 8th day of November in the year 2019

BETWEEN DON S. JACOBSON
9 Whippoorwill Lane
Armonk, New York 10504

party of the first part, and RODRIGO VASCONCELLOS
49 Old Rouring Road
Mt. Kisco, New York 10543

party of the second part,
WITNESSETH, that the party of the first part, in consideration of

Ten (\$10.00)----- dollars

paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, and more particularly bounded and described as follows:

SEE SCHEDULE "A" ANNEXED HERETO AND MADE PART HEREOF

AND BEING a portion of the title acquired by deed from Edith E. Jacobson and Don S. Jacobson, as joint tenants dated August 14, 1985 and recorded August 21, 1985 in the Office of the Clerk of the County of Westchester as Liber 8192, page 5.


TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:



DON S. JACOBSON

SCHEDULE A (Legal Description)

Title No.: TBT41093

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester, and State of New York more particularly being bounded and described as follows:

BEGINNING at a point on the westerly side of Whippoorwill Lane a distance of 572.42 feet from Whippoorwill Property Reference System

RUNNING THENCE westerly South 82° 59' 20" West a distance of 186.39 feet to curve

RUNNING THENCE northerly on a curve bearing to the right having a radius of 1073.19 feet and a length of 274.69 feet to a point

RUNNING THENCE easterly north 88° 35' 10" a distance of 213.29 feet to the westerly side of Whippoorwill Lane

THENCE southerly along said road south 0° 0' 30" east a distance of 255.00 to the point or place of beginning.

FOR
CONVEYANCING
ONLY

The policy to be issued under this report will insure the title to such buildings and improvements erected on the premises which by law constitute real property.

TOGETHER with all the right, title and interest of the party of the first part, of, in and to the land lying in the street in front of and adjoining said premises.

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of Westchester, ss:

On the 8th day of November in the year 2019, before me, the undersigned, personally appeared DON S. JACOBSON, 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 the instrument.

[Signature]
Notary Public

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year , before me, the undersigned, a Notary Public in and for said State, personally appeared , the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

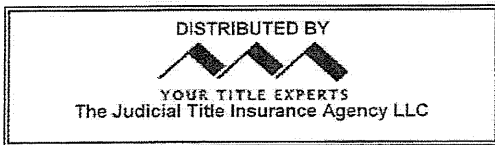
(if the place of residence is in a city, include the street and street number if any, thereof): that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

Bargain and Sale Deed With Covenants

Title No.



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Notary Public, State of New York
No. 4872484
Qualified in Westchester County
Commission Expires September 9, 2020

Ronald A. Baroni Jr
NOTARY PUBLIC STATE OF NY
NO. 4872484
Qualified in Westchester County
EXP 9/8/2020

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of , County of , ss:

*(Or insert District of Columbia, Territory, Possession or Foreign County)

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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), 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 the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgment was taken).

SECTION: 107.04
BLOCK: 1
LOT: 6
COUNTY OR TOWN: Town of North Castle

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800 Westchester Avenue, Suite S514
Rye Brook, NY 10573
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