No. 128612

IN THE
SUPREME COURT OF ILLINOIS

VILLAGE OF KIRKLAND, a municipal corporation,	)	On Appeal from the Appellate Court of of Illinois, Second Judicial District, No. 2-21-0301
Plaintiff-Appellee,	)	
	)	There on appeal from the Circuit Court of the 23rd Judicial Circuit, DeKalb County, Illinois No. 2019 L 00003
KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC I and KIRKLAND PROPERTIES HOLDING COMPANY, LLC II	)	The Honorable Bradley J. Waller, Judge Presiding
Defendants-Appellants.	)	

BRIEF AND APPENDIX OF THE DEFENDANTS-APPELLANTS KIRKLAND HOLDINGS PROPERTIES, LLC I and KIRKLAND HOLDINGS PROPERTIES, LLC II

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INTRODUCTION
(NATURE OF THE CASE)

This is a breach of contract action concerning whether an annexation agreement may be enforced against non-party subsequent owners of part, but not all, of the land annexed by the agreement when the terms of the agreement do not impose successor liability on partial owners and when there is no other contractual assignment of liabilities. This action therefore requires the interpretation of an annexation agreement as well as the application and impact of the Illinois Municipal Code on that agreement. On December 4, 2020, the Circuit Court of DeKalb County, Illinois dismissed the Plaintiff-Appellee, Village of Kirkland's ("Village") Third Amended Complaint pursuant to 735 ILCS 5/2-615, ruling the Village had failed to state a cause of action for breach of contract against the Defendants-Appellants, Kirkland Properties Holdings Company, LLC I ("KPHC I") and Kirkland Properties Holdings Company, LLC II ("KPHC II"), collectively referred to herein as the "Defendants"). (A-28). The Circuit Court made this ruling after finding that, as a matter of law, neither the Annexation Agreement at issue nor the Illinois Municipal Code conferred successor liability on the Defendants following their purchase of portions (but not all) of the property annexed under the Agreement, and neither had ever been contractually assigned or otherwise assumed the original landowner and contracting party's duties under the Agreement. (A-124). The Village appealed this ruling on December 23, 2020. (A-126). On March 17, 2021, the Circuit Court ruled the Defendants were the prevailing party in a dispute concerning the terms of the Annexation Agreement because they had secured a dismissal with prejudice. On June 2, 2021, the Circuit Court awarded the Defendants their reasonable attorney's fees and entered judgment against the Village in accordance with the terms of the Annexation Agreement, which provided for the award of attorney's fees to the prevailing party in such a dispute. (A-125). The Village appealed the Circuit Court's June 2, 2021 judgment on June 3, 2021. (A-127). The Village's two

appeals were consolidated by the Appellate Court of Illinois, Second Judicial District. On April 21, 2022, the Appellate Court reversed the Circuit Court's dismissal of the Village's Third Amended Complaint and vacated the June 2, 2021 judgment. (A-1). Neither the Circuit Court's dismissal order or judgment appealed by the Village is based upon a jury verdict. Rather, the Village's appeals rested entirely on a question raised by its pleading – *i.e.*, whether its Third Amended Complaint stated a claim for breach of contract against the Defendants under a theory of successor liability.

ISSUES PRESENTED

1. Whether the Village stated a cause of action for breach of an annexation agreement against the Defendants who are not parties to the agreement and were not contractually assigned any liabilities under the agreement, but who are owners of record of a portion, but not all, of the property annexed by the agreement.
2. Whether the Village's failure to specify proper orders appealed from and failure to request any prayer for relief in its Notices of Appeal deprived the Appellate Court of jurisdiction over this matter; and
3. Whether the Circuit Court of DeKalb County, Illinois abused its discretion in entering judgment for fees and costs in favor of Appellees and against the Appellant in the amount of $19,381.24.

JURISDICTION

On April 21, 2022, the Appellate Court of Illinois, Second District filed its ruling on the Plaintiff-Appellee, Village of Kirkland's appeals (under Supreme Court Rule 23), reversing the Circuit Court of DeKalb County, Illinois' dismissal of the Village's Third Amended Complaint and vacating the June 2, 2021 judgment against the Village awarding the Defendants their

reasonable attorney's fees. (A-125). On May 12, 2022, the Defendants filed a Petition for Rehearing with the Appellate Court. On May 16, 2022, the Appellate Court denied the Defendants' Petition for Rehearing. (A-27). On June 17, 2022, the Defendants filed with this Honorable Court their Petition for Leave to Appeal from the judgment and opinion of the Appellate Court of Illinois, Second District. On September 28, 2022, this Honorable Court allowed the Defendants' Petition for Leave to Appeal, at which time this Honorable Court exercised its discretionary jurisdiction over this matter. This Brief and Appendix of the Defendants follows.

The Defendants reiterate their position that the Appellate Court of Illinois, Second District, lacked jurisdiction over the Village's December 23, 2020 appeal and June 3, 2021 appeal, pursuant to Illinois Supreme Court Rules 301 and 303(a)(1), because the Village's Notices of Appeal did not contain any relief being requested. (A-126; A127). The Defendants further state that the Appellate Court of Illinois, Second District lacked jurisdiction to review the Circuit Court's March 17, 2021 adjudication, because it was not specifically referenced or fairly inferred from the Village's June 3, 2021 Notice of Appeal.

STATUTES AND RULES INVOLVED

This appeal and case involves construction of the Illinois Municipal Code, specifically 65 ILCS 5/11-15.1-1 *et seq.*, the pertinent provisions of which provide verbatim:

> The corporate authorities of any municipality may enter into an annexation agreement with one or more of the owners of record of land in unincorporated territory. That land may be annexed to the municipality in the manner provided in Article 7 at the time the land is or becomes contiguous to the municipality. The agreement shall be valid and binding for a period of not to exceed 20 years from the date of its execution.
>
> Lack of contiguity to the municipality of property that is the subject of an annexation agreement does not affect the validity of the agreement whether approved by the corporate authorities before or after the effective date of this amendatory Act of 1990.

> This amendatory Act of 1990 is declarative of existing law and does not change the substantive operation of this Section.
>
> 65 ILCS 5/11-15.1-1
>
> Any annexation agreement executed pursuant to this Division 15.1, or in conformity with Section 11-15.1-5 hereof, shall be binding upon the successor owners of record of the land which is the subject of the agreement and upon successor municipal authorities of the municipality and successor municipalities. Any party to such agreement may by civil action, mandamus, injunction or other proceeding, enforce and compel performance of the agreement. A lawsuit to enforce and compel performance of the agreement must be filed within the effective term of the agreement or within 5 years from the date the cause of action accrued, whichever time is later.
>
> 65 ILCS 5/11-15.1-4

This appeal also references Illinois Supreme Court Rule 303(b)(2), referencing the requirements for Notices of Appeal, the pertinent provisions of which provide verbatim:

> [The Notice of Appeal] shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court.
>
> IL R S CT Rule 303(b)(2)

STATEMENT OF FACTS

The general factual background before the Circuit Court and contained in the record on appeal is as follows. On January 31, 2002, Edward Vander-Molen ("Vander-Molen") transferred title to more than 100 acres of real property located in unincorporated Franklin Township, Illinois to the National Bank & Trust Company of Sycamore, N.A. as the Trustee under Trust No. 40-423500 ("Trust"). (*See* January 31, 2002 Trustees Deed, attached to the Third Amended Complaint as Exhibit D). (C543-C640). The Trust's beneficiaries consisted of David R. Rood, Barbara L. Rood, Robert D. Rood, and Ann M. Rood ("Roods"). (C543-C640).

Annexation Agreement

On May 5, 2003, the Appellant, Village of Kirkland ("Village") and the Roods entered into an Annexation Agreement whereby the Village agreed to annex and incorporate into its municipal boundaries a portion of the Trust's real property that had been transferred to it by Vander-Molen. (C569-C591). The Annexation Agreement was drafted by the Village. (C569-C591). In exchange, the Roods agreed to develop the property into a residential subdivision, including completing certain public improvements on the property. (C569-C591). The Roods also agreed to secure an Irrevocable Letter of Credit from a financial institution in order to guaranty the construction and ultimate quality of 100% the improvements they were providing. (C569-C591). Pursuant to the terms of the Annexation Agreement, the Village agreed to annex approximately 114 acres of the Trust's property into the Village. (C569-C591). The exact scope of the property that was subject to the Annexation Agreement was described in Exhibit A to the Agreement (hereinafter referred to as "Subject Property"). (C569-C591). The Annexation Agreement also included language regarding the Village and the Roods' potential successor liability, providing that:

> "All terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, their heirs, executors, administrators, successors and assigns." (C569-C591).

Section 28I does not impose successor liability upon owners of portions, but not all, of the Subject Property. (C569-C591). Nor does the Annexation Agreement provide the covenants set forth therein run with the whole of the Subject Property or any portions thereof. (C569-C591). The Annexation Agreement likewise does not state it is binding on each and every subsequent grantee. (C569-C591). The Annexation Agreement also does not provide any provision imposing successor liability on subsequent owners who obtain title to all or a portion of the Subject Property with the express intent of developing the property. (C569-C591). The Annexation Agreement also does not

make any distinction between classes of subsequent owners, including a distinction between developers or homeowners. (C569-C591). The Annexation Agreement, which was drafted by the Village, is also silent on whether it should or should not be construed against one party or the other. (C569-C591).

The Annexation Agreement also included language regarding shifting attorney's fees in the event of litigation or other disputes involving both the parties to the Annexation Agreement and other individuals or entities ensnared in disputes concerning the Annexation Agreement. (C569-C591). Section 28 of the Annexation Agreement has two separate sections addressing attorney's fees, which provide:

> J. Indemnity. Each of the parties (the "Indemnifying Party") agrees to indemnify, hold harmless and defend each other party from and against (a) any and all liability, loss, cost and damage ("Loss") and (b) reasonable attorneys' fees and expenses, court costs and all other reasonable out-of-pocket expenses ("Expenses") incurred by such other party (the "Indemnified Party"), in connection with or arising out of: (i) any breach of any warranty or the inaccuracy of any representation made by such Indemnifying Party in this Agreement or in any certificate, document or instrument delivered by or on behalf of such Indemnifying Party pursuant hereto; and (ii) any material breach by such Indemnifying Party of, or any other failure of such Indemnifying Party to perform, any of its obligations under this Agreement or under any instrument contemplated hereby. Each of the parties to this Agreement agrees to give prompt notice to all other parties of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity shall be sought hereunder. The Indemnifying Party (or parties) shall have the right to assume the defense of any claim, suit, action or proceeding at its own expense, and, if at the request and expense of the Indemnifying Party, shall assume such defense. No party shall be liable under this paragraph for any settlement effected without its or any claim, litigation or proceeding in respect of which indemnity may be sought hereunder. Failure by the indemnified party to give prompt Notice shall not limit its rights other than this Agreement. ***In the event of any dispute concerning the terms of this Agreement, then the prevailing party shall be entitled to collect all of its costs associated with the settlement of such dispute, including, but not limited to, its attorneys' fees and court costs.***
>
> M. Litigation. If any action at law or in equity, including an action for declaratory relief, is brought by ***a party hereto*** in connection with this Agreement or a breach hereof, the prevailing party in any final judgment or the non-dismissed party in the event of a dismissal shall be entitled to the full amount of all reasonable expenses, including all court costs and actual attorney's fees paid or incurred in good faith, in connection with such action.

(C569-C591).

First Transfer

On November 30, 2011, the Trust transferred portions of the Subject Property to Plank Road, LLC. (*See* November 30, 2011 Trustee's Deed, attached to the Third Amended Complaint as Exhibit I). (C622-C626). By that time, the Subject Property had been subdivided into 82 separate lots. (C543-C640). In total, the Trust transferred title to 41 of the 82 lots that comprised the Subject Property. (C543-C640). The Trust did not assign to Plank Road, LLC (and the transfer was not subject to) any of the covenants, duties, or obligations of the Annexation Agreement. (C543-C640). There is no allegation or exhibit in the Third Amended Complaint indicating the Roods or the Trust expressly or impliedly assigned to Plank Road, LLC any of the covenants, duties, or obligations of the Annexation Agreement. (C543-C640).

Second Transfer

On January 25, 2017, Plank Road transferred certain portions of the Subject Property that it had received from the Trust to the Defendants. (C543-C641)). In total, Plank Road, LLC transferred title to 35 of the 41 lots it owned within the Subject Property to the Defendants. (C543-C640). KPHC I took title to 15 lots and KPHC II took title to 19 lots. (C543-C640). KPHC I and KPHC II remain the owners of these 35 lots out of the 82 total within the Subject Property. (C543-C640). The Defendants were therefore granted less than the entire Subject Property. (C543-C640)

Appellees' Purchase Agreement

The Defendants purchased their 35 lots from Plank Road, LLC pursuant to a confidential Real Estate Owned Purchase and Sale Agreement ("Purchase Agreement"). (C543-C640). Neither the Village, the Roods, or the Trust were parties to the Purchase Agreement. (C543-C640). The only parties were Plank Road, LLC and James Gentile ("Gentile"). (C543-C640). The only asset and/or liability being exchanged under the Purchase Agreement was the 35 lots. (C543-C640)

Specifically, Plank Road, LLC only sold, assigned, transferred, conveyed, and delivered to Gentile "all of [Plank Road, LLC's] right, title and interest in and to the Property." (C543-C640). Plank Road, LLC did not sell or otherwise assign to Gentile or the Defendants any other asset or liability belonging to Plank Road, LLC, or any other entity. (*Id.*).

As part of the Purchase Agreement, Plank Road, LLC was required to obtain a title commitment for the issuance of a title policy for the Property. (C543-C640). Plank Road, LLC was also required to provide Gentile with good and marketable title to the Property. (C543-C640). Both conditions were subject to standard "Permitted Exceptions," which included that Plank Road, LLC would not warrant, and its title company would not insure over, any "county and municipal subdivision, building, health, and zoning ordinances and agreements entered under them," and "agreements with any municipality regarding the development of the Property." (C543-C640). The Defendants therefore took title to the 35 lots, individually, via Special Warranty Deeds that warranted good and marketable title to the Property, with the express exceptions identified in Section 2.9 of the Purchase Agreement. (C543-C640).

Trial Court Proceedings

On June 18, 2019, the Appellant filed its Complaint seeking to hold the Appellees liable for their alleged breach of the Annexation Agreement. The Appellant was subsequently granted leave to file a Fist Amended Complaint. On March 3, 2020, the Trial Court dismissed the Appellant's First Amended Complaint, ruling that the Appellees cannot be considered the successors of the Trust - as defined by the Annexation Agreement and Illinois Municipal Code – as a matter of law. (C480-C514). The Trial Court also ruled that the statement made in the Appellees' Section 2-619 Motion to Dismiss the Appellant's original Complaint was not a judicial admission by the Appellees that they were "successors in interest." (C480-C514). Instead, the Trial

Court ruled the Appellees' simply accepted as true the Appellants' well pled facts (as they were required to do) under 735 ILCS 5/2-619). (C480-C514).

The Appellant was then granted leave to file a second amended complaint that it claimed was capable of curing the defects identified by the Trial Court in the First Amended Complaint – *i.e.* that the Appellees could not be considered successors in interest and held liable under the Annexation Agreement as a matter of law. (C480-C514). On June 20, 2020, the Appellant filed its Second Amended Complaint. (C320-C389). On August 17, 2020, the Trial Court dismissed the Appellant's Second Amended Complaint, again ruling the Appellees are not successors of the Trust - as defined by the Annexation Agreement and Illinois Municipal Code – as a matter of law, and finding the Appellant had failed to assert a claim against the Appellees upon which relief could be granted. (C541-C542). The Trial Court again granted the Appellant leave to file an amended complaint in the event the Appellant could sufficiently allege the existence of contractual assignments and assumptions between the Roods, Plank Road, LLC, and the Appellees so as to establish the requisite contractual privity between the Roods and Appellees. (C541-C542). Without this contractual privity, the Trial Court held the Defendants could not be held liable for breach of the Annexation Agreement and the Plaintiff could not state a claim upon which relief could be granted. (C541-C542).

On August 27, 2020, the Appellant filed its Third Amended Complaint. (C543-C640). On December 4, 2020, the Trial Court dismissed the Appellant's Third Amended Complaint with prejudice. (C688-C776). The Trial Court again based its decision on the fact the Appellees are not successors of the Trust - as defined by the Annexation Agreement and Illinois Municipal Code – as a matter of law, and because the Appellant could not sufficiently allege the existence of

contractual assignments and assumptions between the Roods, Plank Road, LLC, and the Appellees so as to establish the requisite contractual privity between the Roods and Appellees. (C688-C776).

Following the Trial Court's dismissal of the Appellant's action with prejudice, on December 17, 2020, the Defendants filed a Motion for an Award of Attorney's Fees ("Motion for Fees"). (C687-C731). The Motion for Fees argued the Defendants were the prevailing party in a dispute concerning the terms of the Annexation Agreement, and were therefore entitled to an award of their costs and attorney's fees totaling $21,672.24.(C687-C731). These fees and costs were incurred by Defendants from July 17, 2019 through December 17, 2020, during which time the Village vigorously litigated nearly every issue presented in the action, including issuing multiple discovery requests to the Defendants and even subpoenas for records and depositions to Defendants' counsel of record. (C8-C731).

The Village never filed a responsive pleading to the Appellees' Motion for Fees. (C734-C926). Both parties did, however, file briefs addressing the legal issues presented by the Motion for Fees. (C805-C860). On March 17, 2021, the Trial Court conducted a hearing on the issue of whether the Defendants had a contractual right to file the Motion for Fees under the terms of the Annexation Agreement. (R148-R186). Following the hearing, the Trial Court held the Defendants had a contractual right to bring the Motion for Fees under Section 28, Subsection J, of the Annexation Agreement, finding the Defendants were the prevailing party in a dispute concerning the terms of the Annexation Agreement. (C862). The Village did not file any notice appealing the Trial Court's March 12, 2021 ruling or the Order that was entered on March 17, 2021. (C926).

On June 2, 2021, the Trial Court conducted an evidentiary hearing on the reasonableness of the Defendants' attorney's fees and costs. (R222-R335). During the hearing, the Trial Court heard the testimony of several witnesses and received other evidence solely related to the necessity

and reasonableness of the Defendants' attorney's fees. (R222-R335; E2-E111). After proofs were closed, the Trial Court found that the Defendants had necessarily incurred reasonable attorney's fees and costs totaling $19,381.24. (R316-R329). The Trial Court then entered a Judgment for the Defendants against the Village in the amount of $19,381.24. (C924).

Appellate Court Proceedings

On December 23, 2020, the Village filed a Notice of Appeal with the Second District Appellate court appealing the Trial Court's decision to dismiss the Third Amended Complaint with prejudice. (A-126). On June 3, 2021, the Village filed a Notice of Appeal with the Second District Appellate court appealing the Trial Court's judgment against it and in favor of the Defendants awarding the Defendants $19,381.24 for their reasonable attorney's fees and costs. (A-127).

On April 21, 2022, the Appellate Court of Illinois, Second District filed its ruling on the Village's appeals (under Supreme Court Rule 23), reversing the Trial Court's dismissal of the Village's Third Amended Complaint and vacating the June 2, 2021 judgment against the Village awarding the Defendants their reasonable attorney's fees. (A-1). On May 12, 2022, the Defendants filed a Petition for Rehearing with the Appellate Court. On May 16, 2022, the Appellate Court denied the Defendants' Petition for Rehearing. (A-27). On June 17, 2022, the Defendants filed with this Honorable Court their Petition for Leave to Appeal from the judgment and opinion of the Appellate Court of Illinois, Second District. On September 28, 2022, this Honorable Court allowed the Defendants' Petition for Leave to Appeal, at which time this Honorable Court exercised its discretionary jurisdiction over this matter.

STANDARD OF REVIEW

An Appellate Court reviews dismissal under 735 ILCS 5/2–615 *de novo*. *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148. A Section 2–615 motion to dismiss challenges a

complaint's legal sufficiency based on defects apparent on the face of the complaint. *O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 18. In ruling on a Section 2–615 motion to dismiss, the trial court must accept as true all well-pleaded facts, as well as any reasonable inferences to be drawn therefrom. *Id.* The court may also consider matters of which it is entitled to take judicial notice. *Id.* A trial court should grant a motion to dismiss a complaint under Section 2–615 when the allegations in the complaint, construed in the light most favorable to the plaintiff, fail to state a cause of action upon which relief can be granted. *Ryan v. Yarbrough*, 355 Ill.App.3d 342, 344–45 (2d Dist. 2005). An Appellate Court additionally reviews the interpretation of a statute de novo. *In re Estate of Lieberman*, 391 Ill.App.3d 882 (2d Dist. 2009); see also *Hadley v. Illinois Dept. of Corr.*, 224 Ill.2d 365 (2007). The interpretation of a contract is further subject to de novo review. *In re Liquidation of Lumbermens Mut. Cas. Co.*, 2018 IL App (1st) 171613.

The standard of review of a Section 2-619 dismissal is *de novo*. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 341, 278, Ill.Dec. 340, 798 N.E.2d 724 (2003). A Motion to Dismiss under Section 2-619 is brought to dispose of issues of law and easily proved issues of fact at the outset of litigation. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367, 278 Ill.Dec. 555, 799 N.E.2d 273 (2003). A section 2-619 motion admits the legal sufficiency of the complaint, but raises defects, defenses, or other affirmative matter, appearing on the face of the complaint or established by external submissions, that defeat the claim. *Garlick v. Bloomingdale Township*, 2018 IL App (2d) 171013 Paragraph 24, 430 Ill.Dec. 957, 127 N.E.3d 193. In ruling on a Section 2-619 motion to dismiss, the court interprets all pleadings and supporting documents in the light most favorable to the plaintiff. *Van Meter*, 207 Ill.2d at 367-68. The Court considers whether the existence of a genuine issue of material fact precludes dismissal, or, absent such an issue of fact, whether

dismissal is proper as a matter of law. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 341, (2003). Determination of what comments of counsel are judicial admissions is a matter resting within the sound discretion of the trial court, and the trial court's ruling will not be disturbed unless there is a clear abuse of discretion. *Lowe v. Kang*, 167 Ill.App.3d 772, 781 (2d Dist. 1988). The mere recitation of facts alleged in a complaint for purposes of a motion to dismiss does not rise to the level of a judicial admission. *N. Shore Cmty. Bank & Tr. Co. v. Sheffield Wellington LLC*, 2014 IL App (1st) 123784, ¶ 102. Judicial admissions are defined as "deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *Id.*

The standard of review of an award of attorney fees and costs is abuse of discretion. *Kunkel v. P.K. Dependable Const., LLC*, 387 Ill.App.3d 1153, 1159 (5th Dist. 2009). "(A)buse of discretion is a legal term of art; it is not a wooden term, but one of flexibility, depending on the type of case in which it is to be applied, and posture of the case when it arises." *O'Brien v. Meyer*, 281 Ill. App. 3d 832, 834 (1996), quoting *Direx Israel, Ltd. v. Breakthrough Medical Corp.*, 952 F. 2d 802, 814 (4th Cir. 1992). A trial court abuses its discretion only when its ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the trial court, *Petraski v. Thedos*, 2011 IL App (1st) 103,218, ¶97. Other courts have explained that an abuse of discretion occurs when the trial court ignores recognized principles of law such that substantial prejudice results. *Ficken v. Alton & S. Ry. Co.*, 291 Ill.App.3d 635, 643-44, 685 N.E.2d 1,8 (5th. Dist. 1996). However, the trial court must exercise its discretion within the bounds of the law. *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704, 710 (2010). Additionally, a trial court abuses its discretion when its ruling rests on an error of law. *Peeples v. Village of Johnsburg*, 403 Ill.App 3d, 333, 339 (2010).

In the instant matter, the Village failed to state a cause of action for breach of contract upon

which relief could be granted, because the Annexation Agreement does not confer successor liability on subsequent owners of parts, but not all, of the Subject Property, and because the Defendants were never assigned the Rood's contractual duties. The Village also failed to state a cause of action for injunctive relief, because it has an adequate remedy at law. The Third Amended Complaint was therefore properly dismissed by the Circuit Court with prejudice. Thereafter, the Defendants were properly adjudicated as the "prevailing party" of a dispute concerning the terms of the Annexation Agreement (an adjudication which the Village has not appealed). After adjudicating the Defendants as the "prevailing party," the Circuit Court acted within its discretion by awarding the Defendants their reasonable attorney's fees and costs and entering judgment against the Village in the amount of $19,381.24.

ARGUMENT

The decision by the Second District Appellate Court reversing the Circuit Court of DeKalb County's December 4, 2020 dismissal of the Village's Third Amended Complaint pursuant to 735 ILCS 5/2-615 was incorrect. The ruling by the Circuit Court dismissing the Village's Third Amended Complaint was carefully considered and was consistent with the reasoning set forth in several Appellate Court opinions. This Honorable Court should therefore reverse the Appellate Court's decision and reinstate the ruling of the Circuit Court. In doing so, this Court should establish a singular rule of law regarding the requirements needed for annexation agreements established under the Municipal Code to bind subsequent owners of the annexed land. In crafting this rule, the Court should adopt the reasoning followed in multiple Appellate Court opinions, by requiring annexation agreements to clearly and unambiguously state when the contractual obligations of the agreement are covenants that run with the land, and that clearly and unambiguously define the classes of subsequent landowners who may be held liable under the

agreement. Unlike the opinion of the Appellate Court, such a rule will provide much needed predictability for all individuals and entities involved. Once this rule is adopted, the Defendants' position as the "prevailing parties" in a dispute concerning the terms of the Annexation Agreement would be restored, and the Circuit Court's judgment against the Village and in favor of the Defendants must be upheld – especially since the Village has never asserted the Circuit Court abused its discretion in making the award. Finally, this Court should review whether the Appellate Court even had jurisdiction to consider either of the Village's appeals, since neither asserted what relief was being sought.

I. THE VILLAGE'S THIRD AMENDED COMPLAINT WAS PROPERLY DISMISSSED BECAUSE IT FAILED TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED.

For its Third Amended Complaint, the Village alleged the Defendants could be held liable for breach of the Annexation Agreement because they are successors landowners under the terms of the Annexation Agreement and the Illinois Municipal Code. (C548). This allegation is not supported by the terms of the Annexation Agreement or the Municipal Code's statutory language. It is also refuted by numerous well-reasoned opinions of Illinois' Appellate Courts when required to interpret and construct similar agreements and those agreements application to the Municipal Code. This Honorable Court should adopt those courts' and the Circuit Court's reasoning and establish a singular rule of law regarding the requirements of annexation agreements entered into under the Municipal Code to bind subsequent owners of the annexed land. By adopting this reasoning, the Court will further public policy by ensuring the free alienability of Illinois real property, while also establishing a rule that provides certainty and predictability to all parties involved in the purchase and sale of municipally annexed land.

A. The Illinois Municipal Code Does Not Automatically Confer Successor Liability On All Successive Landowners of Annexed Property.

The Illinois Municipal Code provides that municipalities may enter into an annexation agreement with the owners of land in adjacent unincorporated territory, whereby that land is annexed into the municipality in exchange for specified terms and conditions. 65 ILCS 5/11-15.1-1. Under the Code, any annexation agreement executed may be binding upon the successor owners of record of the parcel which is the subject of the agreement. 65 ILCS 5/11-15.1-4. However, as the First District Appellate Court noted, this does not mean every annexation agreement automatically confers successor status upon each and every purchaser of land within an annexed parcel. *Doyle v. Village of Tinley Park*, 2018 IL App (1st) 170357, ¶30. The First District held in *Doyle* that individuals or entities that purchase only portions of the annexed land cannot be considered "successor owners," or be bound by the annexation agreement, unless the annexation agreement clearly and unambiguously states the agreement is binding on successor owners of the entire parcel, ***or any portion thereof***. *Id.* (emphasis added). The First District Appellate Court has found that to hold otherwise would produce an "absurd result" that was never intended by the Illinois legislature when it enacted the Municipal Code. *Id.* Significantly, the First District's reasoning in *Doyle v. Village of Tinley Park*, 2018 IL App (1st) 170357 has been adopted and espoused in several Second District Appellate Court decisions. The rule of law espoused in each of these opinions has proven both workable and fair, providing certainty and predictability for contracting parties and subsequent owners of property that falls within the applicable annexation agreements.

1. *Doyle v. Village of Tinley Park*, 2018 IL App (1st) 170357.

In *Doyle* lot owners within a subdivision sued the Village of Tinley Park seeking to enforce an annexation agreement Tinley Park entered into with the subdivision's original developer. *Doyle*,

2018 IL App (1st) 170357 at ¶1. The original developer was the owner of record of the entire subdivision at the time the annexation agreement was executed. *Id.* at ¶4. Individuals who subsequently purchased lots within the subdivision sought to enforce the agreement on the basis they were "successive landowners" within the meaning of the Illinois Municipal Code and the terms of the annexation agreement. *Id.* at ¶26. The First District Appellate Court disagreed, finding that the individual lot owners could not be considered "successive landowners' under the unambiguous terms of the annexation agreement since they only owned a portion of the annexed subdivision, not the entire parcel of land. *Id.* at ¶30. The First District held that if "the drafters of the agreement intended to confer successor status upon each and every purchaser of a lot within the subdivision…the agreement would have said 'successor owners of record of the Subject Property *or any portion thereof*." *Id.* (emphasis added). The First District found that to hold otherwise would produce the "absurd result" where each and every lot owner in the subdivision would succeed to the original developer's interest in the agreement, and Tinley Park could then sue those owners of part, but not all, of the annexed land to provide the improvements the original developer failed to complete. *Id.* at ¶32. The First District held this result was never intended by the Illinois legislature when it enacted the Municipal Code. *Id.*

2. *City of Elgin v. Arch Insurance Company*, 2015 IL App. (2d) 150013 (2016)

The Second District Appellate Court opinions on the subject of successor liability under the Municipal Code are consistent with the First District's ruling in *Doyle*. For example, in *City of Elgin v. Arch Insurance Company*, 2015 IL App. (2d) 150013 (2016), the Second District Appellate Court held that the successor owner of a portion, but not all of the annexed land, could be bound by the annexation agreement at issue only because the annexation agreement "expressly (and repeatedly) stated that the obligations under the agreement constituted covenants that would

run with the land, and that the agreement would be binding on any successors and assigns of 'all ***or any part*** of the property..." (*Id.*)(emphasis added). Thus, unlike the annexation agreement at issue in *Doyle*, the annexation agreement at issue in *City of Elgin* did unambiguously confer successor liability on owners of part, but not all, of the annexed subdivision. *Id.* Any subsequent purchaser of any portion of the annexed subdivision therefore had ample advance notice that they would be subject to the annexation agreement and the contractual obligations it imposed. *Id.*

3. *United City of Yorkville v. Fidelity and Deposit Company of Maryland*, 2019 IL App. (2d) 180230.

The Second District Appellate Court's opinion in *United City of Yorkville v. Fidelity and Deposit Company of Maryland*, 2019 IL App. (2d) 180230 also follows the reasoning in *Doyle*. There, the Appellate Court held that successor owners of part, but not all, of an annexed parcel of land could be held liable under the annexation agreement at issue in that case. *Id.* Again, unlike the annexation agreement in *Doyle*, the annexation agreement at issue expressly imposed successor liability as follows:

> "It is understood and agreed that this Agreement shall run with the land and as such, shall be assignable to and binding upon each and every subsequent grantee and successor in interest of the OWNERS and DEVELOPER, and the CITY. The foregoing to the contrary notwithstanding, the obligations and duties of OWNERS and DEVELOPER hereunder shall not be deemed transferred to or assumed by any purchaser of a [*sic*] empty lot or a lot improved with a dwelling unit who acquires the same for residential occupation, unless otherwise expressly agreed in writing by such purchaser."

Id. at ¶ 7.

Thus, the annexation agreement in *United City of Yorkville* did not limit successor liability to just those contractual "heirs, executors, administrators, successors and assigns," like the Annexation Agreement at issue in this case. Rather, it went well beyond and imposed successor liability on "each and every subsequent grantee..." The annexation agreement at issue in *United*

City of Yorkville also contemplated successor owners who obtained title to the land with the express intent of developing the property. *Id.*

The Municipal Code does not define the term "successor." 65 ILCS 5/11-15.1-4. Accordingly, in each of the above cases, the courts relied on the plain and unambiguous language of the annexation agreements at issue to determine when subsequent owners of part, but not all, of the annexed property could be subject to successor liability. The rule established in *Doyle*, and adhered to in *City of Elgin* and *United City of Yorkville*, holds that in order to impose successor liability on owners of part, but not all, of the annexed property requires a clear and unambiguous express statement of just such an intent in the annexation agreement. This well-reasoned rule of law ensures predictability and stability in the subsequent purchase and sale of the property subject to the annexation agreement. Instead of guessing as to who may be liable for the agreements obligations and under what circumstances, or relying on the courts' interpretation of the Municipal Code to expand or limit the statutory language in 65 ILCS 5/11-15.1-4, this rule of law reasonably places the task on the drafters of the agreement to make their intent clear within the language of the agreement itself, which then provides clarity and predictability to all future purchases of the subject property. There is no such express statement of intent in the Annexation Agreement at issue in this appeal, and the uncertainty caused by the absence of such clear terms has resulted in the size and scope of this litigation. Adopting a uniform rule consistent with the reasoning espoused in *Doyle* and adopted in *City of Elgin* and *United City of Yorkville* would prevent similar litigation in the future.

B. The Annexation Agreement Does Not Impose Successor Liability On the Appellees.

If the Court adopts the sound reasoning of the Appellate Courts discussed above, it follows the Circuit Court correctly dismissed the Village's Third Amended Complaint with prejudice. The

Annexation Agreement at issue in the instant matter does not contain any express statement of intent that would allow the Village to hold the Defendants liable for the Roods' failure to perform each of their contractual obligations. When interpreting any contract, a court's principal goal in construing the agreement is to ascertain and give effect to the parties' intent at the time they entered into the contract. *USG Corp. v. Sterling Plumbing Group, Inc.*, 247 Ill.App.3d 316, 318 (1st Dist. 1993). Unless an ambiguity exists, the parties' intent must be ascertained exclusively from the express language of the contract, and the courts cannot read into the agreement provisions that do not exist therein. *Shields Pork Plus, Inc. v. Swiss Valley Ag Serv.*, 329 Ill.App.3d 305, 310 (4th Dist. 2002); *Carrillo v. Jam Productions, Ltd.*, 173 Ill.App.3d 693, 698 (1st Dist. 1988). If any ambiguities do exist in a contract, those ambiguities should be resolved against its drafter. *Premier Title Co. v. Donahue*, 328 Ill.App.3d 161, 165 (2d Dist. 2002).

1. The Annexation Agreement Does Not State It Is a Covenant That Runs With All or Any Portion of the Subject Property or That It Is Binding on Every Subsequent Grantee.

Unlike the annexation agreements at issue in *City of Elgin* and *United City of Yorkville*, the Annexation Agreement at issue in this appeal does not include any express statement of intent to hold successor landowners liable for Roods or Trusts' contractual obligations. The Agreement does not expressly state it is a covenant that runs with all or any portion of the Subject Property, or that its terms would be binding on each and every grantee of all or any portion of the Subject Property. (C543-C641) Contrary to arguments previously asserted by Village in this action, it is of no consequence if the Village and/or the Roods intended that there would be more than one subsequent owners when the Subject Property was divided into lots. Especially since this argument is contradicted by the unambiguous terms of the Annexation Agreement itself. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18 (Where an exhibit contradicts the allegations in a complaint,

the exhibit controls). Like the annexation agreement in *Doyle*, Section 28I of the Annexation Agreement does not expressly impose successor liability on owners of the Subject Property, or *any portion thereof*. (C543-C641). The Annexation Agreement does not even provide that the obligations of the Landowner are covenants running with the land. (*Id.*). Instead, the Annexation Agreement simply provides "All terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, their heirs, executors, administrators, successors and assigns." (C543-C641) In the instant matter, as in *Doyle*, the Defendants did not purchase the entire Subject Property (but only limited portions thereof), and they did not purchase the lots from the Roods. (C543-C641). Given the Annexation Agreement does not expressly provide that its obligations are covenants that run with the Subject Property (or any portion thereof), or that the Agreement is binding on each and every subsequent grantee, the courts may not (as the Village appears to have requested) read such a term into the Annexation Agreement, especially when it creates significant financial obligations on unsuspecting purchasers of the Subject Property. If it was the Village's intent to make the Annexation Agreement binding on subsequent grantees, or to make it a covenant that runs with all or any part of the Subject Property, it was incumbent on the Village (who drafted the Agreement) to include that express statement of intent. The Village did not, and under the sound and fair reasoning followed by the courts in *Doyle*, *City of Elgin* and *United City of Yorkville*, this should be fatal to the Village's efforts to hold the Defendants liable for the Roods' alleged breach of the Annexation Agreement. The Annexation Agreement does not include any express statement of intent to hold successor landowners liable for the Roods or the Trusts' contractual obligations, and therefore it was not the parties' intention that the covenants set forth in the Agreement run with all or any portion of the land. If it was, that intention would be included in an express term in the Agreement itself. It is

not, and under well-settled principles of contract law, no such term should be read into the Agreement by a court.

2. The Annexation Agreement Does Not Provide Successor Liability for Owners of More Than One Lot or for Purchasers Who Intend to Develop the Subject Property.

Similarly, the Annexation Agreement does not include any express statement of intent that would allow the Village to hold the Defendants liable on the basis they own more than one lot, or because they intended to develop the 35 lots they purchased (which they did not). Without any such express statement of intent within the Annexation Agreement, the Village not only asks the courts to read terms into the Agreement which do not exist, it asks the courts to establish an arbitrary and ultimately unworkable rule that is contrary to the reasoning of *Doyle* that was adhered to in the *City of Elgin* and *United City of Yorkville* opinions.

What the Village is asking the courts to do is draw an arbitrary line between owners of one lot and owners of more than one lot when (unlike the annexation agreement in *United City of Yorkville*) the Annexation Agreement at issue in this case makes no such distinction, and there is no allegation (and cannot be) that the Defendants ever intended to develop the properties or assume the role of the original developer. Without an express provision in the Annexation Agreement making this distinction and establishing certain classes, the courts should not infer any such distinction. As a general policy, deviating from the rule followed in *Doyle*, *City of Elgin*, and *United City of Yorkville*, when there is no statement of express intent in the Annexation Agreement, would be incredibly problematic and raise a number of questions. First, at what point in time does an owner of multiple lots become liable under the annexation agreement? Any distinction not included in the annexation agreement would be arbitrary or capricious. This is amply demonstrated by the Second District's Second ruling in this case reversing the Trial Court's dismissal of the

Village's Third Amended Complaint, where the Appellate Court made distinctions between the Defendants' ownership of lots within the Subject Property compared to other presumed owners, even though no such distinction exists in the Annexation Agreement or within the record on appeal.(A-1). Similarly, what would constitute the grounds for deeming a successive owner a "developer" as opposed to a mere property owner? There would be no clear guidelines and any attempt would also be arbitrary and capricious. Both scenarios would also lead to the "absurd" result the *Doyle* court feared, where a municipal body could be the sole arbitrator on which property owners to pursue and seek to hold liable for an original developer's alleged breach of the annexation agreement. This would lead to the unjust result the Village is attempting to achieve in this action, where it has sued KPHC I (who owns 15 lots) and KPHC II (who owns 19 lots), who are not developers, but not the owners of the remaining 48 lots (not all of whom are single family home owners). As the court in *Doyle* stated, this result was never intended by the Illinois legislature when it enacted the Municipal Code. This Court should affirm this statutory construction.

If the Village intended for the Annexation Agreement to be a covenant that ran with all or certain portions of the Subject Property, or to impose successor liability on each and every grantee or on certain classes of successive owners, then it was incumbent on the Village to include those express statements of intent in the Annexation Agreement. The Village did not, even though it drafted the Agreement. The courts cannot read those terms into the Agreement now. Even if the terms of the Annexation Agreement on this issue are ambiguous (which has never been asserted), then those ambiguities must be resolved against the Village who drafted the Agreement. The Court should follow the reasoning set forth in *Doyle*, *City of Elgin*, and *United City of Yorkville*, and find that the Defendants cannot be considered successor landowners as a matter of law. If the Defendants cannot be considered successor landowners as a matter of law, the Village cannot state

a claim against them for breach of the Annexation Agreement as a matter of law, and the Third Amended Complaint was properly dismissed pursuant to Section 2-615.

C. The Trial Court Properly Held the Defendants' Recitation of Facts in Their Section 2-619 Motion to Dismiss Was Not a Judicial Admission.

Seeming to understand the deficiencies in the unambiguous language of the Annexation Agreement, the Village attempted to allege in the Third Amended Complaint that KPHC I and KPHC II have already conceded by admission they are "successors" and therefore they are bound by the Annexation Agreement. (C543-C641) This argument is spurious at best and cannot save the Village's claims. The statement the Village relies on was not a judicial admission, and it is not possible to "concede" or admit an issue of law. More importantly, the trial court already properly ruled that the statements the Village relies on were not judicial admissions, a ruling which the Village has not appealed and has therefore waived.

1. The Defendants Did Not and Could Not Concede They Are Successors Under the Annexation Agreement.

The Defendants did not admit to being successors who can be held liable under the Annexation Agreement when they recited the Village's allegations in their Section 2-619 Motion to Dismiss. After being served with the Village's initial Complaint, the Defendants filed a motion to dismiss the Complaint pursuant to Section 2-619 of the Code of Civil Procedure. (C92-C105). As factual background, and within the constraints of Section 5/2-619, the Defendants stated: "Defendants, along with dozens of lot owners...are the successors in interest" of the land comprising the Hickory Ridge Subdivision. (C92-C105). The Defendants then cited the Village's Complaint. (C92-C105). This does not concede or admit the legal issue the Village is relying on for its Third Amended Complaint, and is not the type of "formal" act that is required for a judicial admission.

The statement relied upon by the Village was not sworn to in an affidavit or otherwise verified. (C92-C105). Nor was it an evidentiary admission or a stipulation of counsel. (C92-C105). Instead, it was merely referencing and, for purposes of the motion to dismiss, accepting as true the well pled allegations in the Village's Complaint. For purposes of a Section 2–619 motion, all well-pleaded facts in the complaint are accepted as true, as well as any inferences that may reasonably be drawn in plaintiff's favor. *Doe v. Univ. of Chicago Med. Ctr.*, 2015 IL App (1st) 133735, ¶ 35. Paragraph 6 of the Village's original Complaint clearly alleged "the Defendants are successors to the 'Landowners' as such term is used and defined in the Annexation Agreement." (C543-C641). For purposes of KPHC I and KPCH II's Motion to Dismiss, this allegation was accepted as true and was therefore recited in the factual background section of the Motion.

The mere recitation of facts alleged in a complaint for purposes of a motion to dismiss does not rise to the level of a judicial admission. Judicial admissions are defined as "deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *N. Shore Cmty. Bank & Tr. Co. v. Sheffield Wellington LLC*, 2014 IL App (1st) 123784, ¶ 102; The doctrine of judicial admissions requires thoughtful study for its application so that "justice not be done on the strength of a chance statement made by a nervous party." *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437, ¶ 45; see also *Herman v. Power Maint. & Constructors, LLC*, 388 Ill.App.3d 352, 361 (4th Dist. 2009)(a court should not apply the doctrine to an attorney's statement of legal opinion in a summary judgment proceeding, especially if the opinion was manifestly incorrect within the context of the statement itself). It would be manifestly unjust if a party's recitation of factual allegations in an opposing parties pleading, recited as part of and which must be accepted as true for purposes of a Section 2-619 motion to dismiss, rose to

the level of a judicial admission. The law is not so fickle, nor is it designed to serve as a trap for litigants. The Court should therefore reject the Village's argument.

Even if the Defendants' recitation of the facts alleged in a complaint as part of their Section 2-619 Motion to Dismiss could rise to the level of a judicial admission (which it cannot), the Defendants cannot admit to something that Illinois jurisprudence holds is not possible as a matter of law. Whether the Defendants can be considered "successors" and/or "assigns" under the Annexation Agreement is a question of law, not fact. Only conclusions of fact, not conclusions of law, are proper subjects for judicial admission. *Feret v. Schillerstrom*, 363 Ill.App.3d 534, 539–40 (2d Dist. 2006). The issue of whether the Defendants can be considered successor landowners who can be held liable under the Annexation Agreement is a question of law, nor fact. It is therefore not the proper subject of a judicial admission.

2. The Village Has Waived Its Right to Challenge the Trial Court's Finding the Appellees' Recitation of Facts in Their Section 2-619 Motion to Dismiss Was Not a Judicial Admission.

This Court should not even address the issue of whether the Defendants' recitation of facts in their Section 2-619 Motion to Dismiss rise to the level of a judicial admission, because it has been waived by the Village. During the course of the trial court proceedings, the trial court rejected the Village's assertion that KPHC I and KPHC II had conceded they are "successors" under the Annexation Agreement. (C480-C514). The trial court's ruling was final therefore became the law-of-the-case, and the law-of-the-case doctrine subsequently barred the Village from relitigating this factual and legal issue in its Third Amended Complaint.

Under the law-of-the-case doctrine, a ruling in a particular case will continue to be the law of the case as long as the facts remain the same. *People v. Patterson*, 154 Ill.2d 414 (1992); see also *In re Webster Place Athletic Club, LLC*, 606 B.R. 752, 755 (Bankr. N.D. Ill. 2019)("when

a court decides an issue, that decision should continue to govern the same issues in subsequent stages in the same case"). In this way, the law-of-the-case doctrine protects the parties' settled expectations, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end. *Id.*

The Village's Notice of Appeal filed in this matter is limited to the trial court's December 7, 2020 order. (A-126). The Village does not appeal the trial court's March 3, 2020 ruling, wherein the trial court held the Defendants' recitation of facts in their Section 2-619 Motion to Dismiss did not amount to a judicial admission. Nor does the Village argue in its Appellant's Brief submitted to the Second District Appellate Court that the Circuit Court's ruling was an abuse of discretion. By not raising this issue in its Notice of Appeal and challenging the Circuit Court's ruling in its opening brief, the Village has waived the issue on appeal. *Lexion Med., LLC v. Northgate Techs., Inc.*, 618 F. Supp. 2d 896 (N.D. Ill. 2009), aff'd (Fed. Cir. 2011)(An issue that falls within the scope of the judgment appealed from that is not raised by the appellant in its opening brief on appeal is necessarily waived).

Even if the Village had not waived the issue, it failed during its appeal before the Second District to provide any evidence or argument suggesting the Circuit Court's ruling was an abuse of discretion. *See Lowe v. Kang*, 167 Ill.App.3d 772, 781 (2d Dist. 1988) (Determination of what comments of counsel are judicial admissions is a matter resting within the sound discretion of the trial court, and the trial court's ruling will not be disturbed unless there is a clear abuse of discretion).

In short, the Circuit Court properly ruled that the Village had failed to state a claim as a matter of law under its proper interpretation of the Annexation Agreement, its' appropriate construction of the Municipal Code, and in light of the well-reasoned rule of law espoused and

adopted by *Doyle*, *City of Elgin*, and *United City of Yorkville*. This Court should adopt that reasoning in a uniform rule that will ensure predictability and will ensure the principles of free alienation of real property within Illinois. *Baker v. Loves Park Sav. & Loan Ass'n*, 61 Ill.2d 119 (1975).

II. .

If this Court adopts the reasoning adhered to in the *Doyle*, *City of Elgin*, and *United City of Yorkville* opinions, the only way the Village will be able to state a claim against the Defendants for breach of the Annexation Agreement is if the Village is able to establish some other form of privity between KPHC I and/or KPHC II on the one hand, and the Roods and/or the Trust on the other hand. The Village has previously urged the Circuit Court and Appellate Court to utilize common and generalized definitions for the term "assign," including from Dictionary.com. But contrary to this generalized definition, the well-settled rule in Illinois (and in the majority of American jurisdictions) is that an individual or entity that purchases the assets of another entity cannot be liable for the debts or liabilities of the transferring entity. *Vernon v. Schuster*, 179 Ill.2d 338, 344–45 (1997). There are four exceptions to this general rule of successor non-liability: (1) where there is an express or implied agreement of assumption (i.e. a contractual assignment); (2) where the transaction amounts to a consolidation or merger of the purchaser or seller company; (3) where the purchaser is merely a continuation of the seller; or (4) where the transaction is for the fraudulent purpose of escaping liability for the seller's obligations. *Id.* The Village's Third Amended Complaint failed to allege any facts that are capable of demonstrating the application of any of these exceptions or the fundamental requirement of contractual privity between KPHC I and/or KPHC II and the Roods and/or the Trust.

A. The Chain of Title and the Respective Grantor/Grantees' Contractual Agreements.

The Third Amended Complaint establishes that on November 30, 2011, the Trust transferred portions of the Subject Property to Plank Road, LLC. (C543-C641). Contrary to the arguments made by the Village, there is no allegation or exhibit in the Third Amended Complaint (that is not conclusory and/or contradicted by the exhibits attached thereto) indicating the Roods or the Trust expressly or impliedly assigned to Plank Road, LLC any of the covenants, duties, or obligations of the Annexation Agreement. (C543-C641) There is also no allegation or exhibit in the Third Amended Complaint indicating the transaction amounted to a consolidation or merger between the Trust, the Roods, and/or Plank Road, LLC. (*Id.*). There is also no allegation or exhibit in the Third Amended Complaint indicating Plank Road, LLC was merely a continuation of the Trust. (*Id.*). There is also no allegation or exhibit in the Third Amended Complaint indicating the transaction was to achieve a fraudulent purpose, or was intended for the Trust to escape liability under the Annexation Agreement. (C543-C641).

Similarly, the Third Amended Complaint establishes that on January 25, 2017, Plank Road, LLC transferred certain portions of the property that it had received from the Roods and/or Trust to KPHC I and KPHC II. (C543-C641). There is no allegation or exhibit in the Third Amended Complaint indicating Plank Road, LLC expressly or impliedly assigned to KPHC I and/or KPHC II any of the covenants, duties, or obligations of the Annexation Agreement. (C543-C641) There is also no allegation or exhibit in the Third Amended Complaint indicating the transaction amounted to a consolidation or merger between the Trust, the Roods, Plank Road, LLC, and/or KPHC I and/or KPHC II. (*Id.*). There is also no allegation or exhibit in the Third Amended Complaint indicating Defendants was merely a continuation of the Trust or Plank Road, LLC. (*Id.*). There is also no allegation or exhibit in the Third Amended Complaint indicating

the transaction was to achieve a fraudulent purpose, or was intended for the Trust and/or Plank Road, LLC to escape liability under the Annexation Agreement. (C543-C641).

B. There Was No Contractual Assignment or Other Agreement Whereby the Defendants Assumed the Landowner's Obligations Under the Annexation Agreement.

The Village's Third Amended Complaint likewise failed to allege any facts that are capable of demonstrating KPHC I and/or KPHC II assumed or were otherwise assigned the contractual liabilities of the original Landowners – *i.e.* the Roods and the Trust. Moreover, the exhibits attached to Village's Third Amended Complaint demonstrate there was no such assignment or assumption of liabilities. Where an exhibit contradicts the allegations in a complaint, the exhibit controls. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18. The Defendants, through Gentile, purchased the Property from Plank Road, LLC pursuant to the Purchase Agreement. (C543-C641). Neither the Village nor the Roods/Trust were parties to the Purchase Agreement. (*Id.*). The only asset being transferred pursuant to the Purchase Agreement was the 35 lots. (C543-C641) Plank Road, LLC did not sell or otherwise assign to KPHC I and/or KPHC II any other asset or liability belonging to Plank Road, LLC, or any other entity. (*Id.*). Thus, there was no express or implied agreement of assumption (i.e. a contractual assignment) and there was no consolidation or merger. (C543-C641). Even if there was an express or implied assumption (which there clearly is not), that still would not establish Plank Road, LLC had ever contractually assumed the original Landowner's liability. In short, in order for the Village to demonstrate KPHC I and/or KPHC II were contractually assigned the Roods/Trust's liabilities under the Annexation Agreement, it would first have to demonstrate that Plank Road, LLC (and any other prior landowner) was also assigned those liabilities. The Village has not and cannot allege any such assignment to, or assumption by, Plank Road, LLC or any other prior landowner.

C. The Defendants Are Not a Continuation of Plank Road, LLC and Their Purchase of the 35 Lots Was Not to Achieve a Fraudulent Purpose.

The Village was also unable to allege the Defendants are somehow the mere continuations of Plank Road, LLC, or that Plank Road, LLC was a mere continuation of the Roods/Trust. There is likewise no allegation that KPHC I or KPHC II receiving title to the 35 lots was for some fraudulent purpose or for escaping liability. (C543-C641)

D. The Defendants Did Not Voluntarily Assume any Liabilities Under Their Purchase Agreement With Plank Road, LLC.

Seeming to accept that there was no contractual assignment of the original Landowner's liabilities under the Annexation Agreement (to Plank Road, LLC or to KPHC I or KPHC II) the Village instead has argued the Defendants somehow voluntarily assumed the liabilities pursuant to the terms of Gentile's Purchase Agreement with Plank Road, LLC. This argument also fails.

First, the fact that Plank Road, LLC obtained a title commitment that excluded standard "Permitted Exceptions" that arguably included the Annexation Agreement, is not a voluntary assumption of the original Landowner's obligations under the Annexation Agreement. The same is true of the Special Warranty Deeds that transferred the Property to KPHC I and KPHC II. Rather, both merely confirm that Plank Road, LLC was warranting it had good and marketable title to the 35 lots it was selling to KPHC I and KPHC II, with the standard exception of matters appearing on the lots' title, such as the recorded Annexation Agreement. (C543-C641). Similarly, the Purchase Agreement's provisions that the Property was exempt from the provisions of the Federal Interstate Land Sales Full Disclosure Act have no bearing on whether KPHC I and/or KPHC II assumed or were otherwise assigned any of the original Landowner's obligations under the Annexation Agreement. (C543-C641). KPHC I and KPHC II's intent when purchasing the 35 lots is irrelevant when determining whether they can be held liable as a successor.

Second, the fact the Purchase Agreement also provided that the 35 lots were exempt from the provisions of the Federal Interstate Land Sales Full Disclosure Act, 15 U.S.C. §1701, et seq., is also irrelevant (C543-C641). This exemption was based on Gentile's representation that he was acquiring the 35 lots for the purpose of resale or lease of the lots to persons engaged in the business of constructing residential buildings. (C543-C641). It was also based on the fact the Agreement was for the sale of which are located within a municipality and subdivision where minimum building standards are imposed and where a bond or other surety acceptable to the municipality ***has*** been posted to assure completion of such minimum building standards (implying the bond or surety had already been posted by someone other than Defendants prior to their entry of the Purchase Agreement). (*Id*) Since the Property consisted of vacant lots and were subject to the various building standards imposed by the county and/or municipality, the only purpose for which they could be purchased was to either construct residential buildings thereon, or sell them to one or more persons engaged in the business of constructing residential buildings. (*Id.*). In any event, this representation has no bearing on whether the Defendants voluntarily assumed liabilities under the Annexation Agreement, and it certainly does not demonstrate any such voluntary assumption. Even if it did (which it does not), it still does not demonstrate Plank Road, LLC ever assumed those liabilities from prior owners itself, and without such an assumption Plank Road, LLC had no liability to assign to KPHC I or KPHC II.

The allegations and exhibits attached to the Village's Third Amended Complaint do not establish there was ever an express or implied agreement of assumption (i.e. a contractual assignment) between the Roods/Trust, Plank Road, LLC, or KPHC I and/or KPHC II. It also does not establish Plank Road, LLC's receipt of the 41 lots from the Village, or KPHC I and/or KPHC II's receipt of the 35 lots from Plank Road, LLC. operated as a consolidation or merger. Nor does

the Village's Third Amended Complaint demonstrate Plank Road, LLC or KPHC I and/or KPHC II are a mere continuation of the Roods/Trust. The Village's Third Amended Complaint also does not allege any of the transactions were for the fraudulent purpose or for escaping liability. (C543-C641) Without these allegations, and without being able to demonstrate KPHC I and/or KPHC II are successor landowners as discussed above, the Village is unable to state a claim for breach of contract upon which relief can be granted. The Village's Third Amended Complaint was therefore properly dismissed with prejudice and this Court should reverse the Appellate Court's opinion.

III. THE VILLAGE HAS FAILED TO STATE A CLAIM FOR INJUNCTIVE RELIEF UPON WHICH RELIEF CAN BE GRANTED.

In addition to the Village's inability to allege the Defendants' successor liability or assumption of liability under the Annexation Agreement, Counts III and IV of its Third Amended Complaint were also properly dismissed for their independent failure to state a claim upon which relief can be granted. Counts III and IV of the Third Amended Complaint sought injunctive relief in the form of specific performance that required KPHC I and KPHC II to issue an irrevocable letter of credit to the Village from a financial institution to guarantee completion of the improvements contemplated in the Annexation Agreement. (C543-C641). By its very nature, this request demonstrates that the Village has an adequate remedy at law and is therefore not entitled to injunctive relief.

A claim for specific performance is by its nature a claim for injunctive relief. *New Park Forest Associates II v. Rogers Enterprises, Inc.*, 195 Ill.App.3d 757 (1st Dist. 1990). A party seeking a permanent injunction must demonstrate: (1) a clear and ascertainable right in need of protection; (2) irreparable harm if the injunctive relief is not granted; and (3) no adequate remedy at law. *Sparks v. Gray*, 334 Ill.App.3d 390 (5th Dist. 2002). "[I]rreparable harm occurs only where the remedy at law is inadequate; that is, where monetary damages cannot adequately compensate

the injury, or the injury cannot be measured by pecuniary standards." *Ajax Eng'g Corp. v. Sentry Ins.*, 143 Ill.App.3d 81, 83–84 (5th Dist. 1986). As such, where the injunctive relief sought is monetary in nature and can be calculated with a great degree of certainty, the remedy sought is legal in nature and an injunction is inappropriate. *Id.*

By way of Counts III and IV, the Village sought an injunctive relief in the form of ordering the Defendants to secure letters of credit with a financial institution in the amount of 100% of the contract costs of construction. In order to determine what "100% of the contract costs of construction are," the Village would need to calculate (and prove) those costs with a great degree of certainty. Thus, the relief sought can be calculated with a great degree of certainty and is monetary in nature. The Village therefore has an adequate remedy at law, and Counts III and IV of the Third Amended Complaint were properly dismissed as a matter of law.

Lastly, the Village has argued that it stated a claim for injunctive relief upon which relief can be granted because the Illinois Municipal Code permits it to seek equitable and injunctive relief. In furtherance of this argument, the Village cites *Village of Orland Park v. First Fed. Saving & Loan Association of Chicago*, 135 Ill.App.3d 520 (1st Dist. 1985) for the proposition that merely seeking monetary damages does not preclude enforcing other terms of an annexation agreement. This of course is correct; but what the Village fails to take into consideration is the nature of the injunctive relief it is seeking. The Village is not seeking specific performance of the original Landowner's obligation to construct the agreed upon improvements in the Hickory Ridge Subdivision. Rather, the Village is seeking to have KPHC I and KPHC II secure letters of credit in the amount of 100% of the contract costs for those improvements. This is ultimately the same relief being sought by Counts I and II of the Third Amended Complaint and is entirely monetary in nature.

In short, what the Village is seeking is a permanent injunction requiring the Defendants to secure a sum of money (equivalent to any money judgment they receive under Counts I and II), deposit it with a financial institution, and then have that institution issue an irrevocable letter of credit. By its very nature this relief is the equivalent of a remedy at law with extra (and entirely superfluous) steps. Since the Village admits it has an adequate remedy at law, its claims for injunctive relief were properly dismissed as a matter of law.

IV. THE DEFENDANTS HAVE STANDING TO ENFORCE THE ATTORNEY FEE PROVISION IN THE ANNEXATION AGREEMENT THAT PERMITS THE PREVAILING PARTY OF ANY DISPUTE TO RECOVER ITS COSTS AND ATTORNEY'S FEES.

After the Village's Third Amended Complaint was dismissed with prejudice, the Circuit Court properly held, the Appellees were the prevailing party in a dispute concerning the terms of the Annexation Agreement and entitled to an award of their reasonable attorney's fees and costs. Contrary to the arguments proffered by the Village, this ruling does not contradict the Circit Court's prior finding that the Defendants are not successors or contractual assigns to the Annexation Agreement. Rather, it is in accordance with the Agreement's express and unambiguous terms which allow non-parties to recover their fees if they prevail in a dispute concerning the terms of the Agreement.

A. The Annexation Agreement's Plain and Unambiguous Language Permits Non-Parties to Recover Their Attorney's Fees When They Are the Prevailing Party in a Dispute Concerning its Terms.

The unambiguous language in the Annexation Agreement makes clear the original drafters intended for non-parties to the Agreement, such as the Defendants, to recover their attorney's fees in the event they were a prevailing party in a dispute over the Agreement's terms. This is apparent by the inclusion of two separate and distinct attorney's fees clauses within the Agreement.

The principal objective in construing an agreement is to give effect to the intent of the parties at the time they entered into the agreement. *First Bank & Tr. Co. of Illinois v. Vill. of Orland Hills*, 338 Ill.App.3d 35, 40 (1st Dist. 2003). When an agreement's provisions are unambiguous, courts are to ascertain the parties' intent from the language of the agreement. *Id.* The agreement is to be construed as a whole, giving meaning and effect to every provision. *Id.* When parties agree to and insert provisions into their agreement, courts are to presume that this is done purposefully and that the language employed is to be given effect. *Id.* A court may not interpret an agreement in a way that would nullify its provisions, render them meaningless, or consider them surplusage. *Id. See also Coles-Moultrie Elec. Co-op. v. City of Sullivan*, 304 Ill.App.3d 153, 159 (4th Dist. 1999).

The Annexation Agreement contains two separate and distinct attorney's fees provisions. The first is in Section 28, Subsection J, and provides, "In the event of ***any dispute*** concerning the terms of this Agreement, then the prevailing party shall be entitled to collect all of its costs associated with the settlement of such dispute, including, but not limited to, its attorneys' fees and court costs." (E21 – emphasis added). The second provision is in Section 28, Subsection M, and provides, "If any action at law or in equity…is brought by ***a party hereto*** in connection with this Agreement or ***a breach*** hereof, the prevailing party in any final judgment or the non-dismissed party in the event of a dismissal shall be entitled to…[its] actual attorney's fees paid or incurred in good faith…" (E22 – emphasis added).

These two clauses were intentionally included within the Annexation Agreement and serve two separate and distinct purposes. As such, they must be interpreted together, and in a way that does not render one or both meaningless or consider them mere surplusage. Subsection J is clearly intended to give non-parties to the Agreement, who are nevertheless involved in a dispute over its

terms, a mechanism to ensure they can recover their attorney's fees if they prevail in that dispute. One needs to look no further than the Appellees for an example of when such a scenario might arise. The fact that this was the drafters' intent is evident by the inclusion of such broad language in Subsection J like "***any*** dispute concerning the terms of the Agreement." (E21 – emphasis added). It is also evident by its inclusion within the indemnification provisions of the Agreement, which deals exclusively with disputes involving non-parties. (*Id.*).

Conversely, Subsection M is intended to deal exclusively with disputes between the original parties and their contractual successors and/or assigns. (E22). This is why the drafters used different language than used in Subsection J. Namely, Subsection M uses the language "***a party hereto*** in connection with this Agreement or a breach hereof," while Subsection J uses the language "***any*** dispute concerning the terms of this Agreement, then the prevailing ***party***." (E21-E22 – emphasis added). Subjection M also specifically addresses a "breach" of the Agreement, which only a party thereto could be held liable, while Subsection J addresses "any dispute." (E21-E22). While both Subsections use the term "party," Subsection M makes the distinction of a "party hereto" meaning a party to the Agreement, while Subsection J simply states a "party" to "any dispute" and which (unlike Subsection M) does not limit the right to parties to the Agreement (i.e. "parties hereto"). (*Id.*) Further evidence of the drafter's intent was the use of the same "party hereto" language in Section 28I, which also addresses only parties' to the agreement, or their contractual successors or assigns. (E20).

The drafters of the Annexation Agreement did not include these two separate attorney's fees provisions within the Annexation Agreement by mistake, and the distinctive language used demonstrates neither one is mere surplusage. Rather, it is apparent they serve two distinct purposes, and Subsection J is intended to ensure non-parties are permitted to recover their attorney's fees

and costs when they are forced into a dispute concerning the Annexation Agreement but ultimately prevail. Accordingly, although the Defendants are not parties to the Annexation Agreement (whether by successorship, assignment, or otherwise) and have never claimed to be, they are nevertheless the prevailing party in a dispute over its terms and are entitled to their attorney's fees and costs under Subsection J.

B. The Defendants are the Undisputed Prevailing Party.

During the trial court proceedings, the Circuit Court dismissed each of the Village's claims with prejudice. (C668). The effect of these dismissals was to declare the Defendants the prevailing party of the dispute raised by the Village, and it resulted in the Defendants achieving the same level of success had they prevailed on the merits during a trial or otherwise achieved judgment in their favor.

It is well settled that a party will be considered the prevailing party for the purposes of awarding attorney's fees when that party is successful on any significant issue and/or receives a judgment in its favor. *Naperville S. Commons, LLC v. Nguyen*, 2013 IL App (3d) 120382, ¶ 16. In this action, the Defendants were successful on each significant issue, while the Village did not achieve any measure of success and each of its claims were summarily dismissed by the Trial Court. (C8-C979). The Trial Court therefore properly found the Defendants were the prevailing party and therefore entitled to its fees and costs. (R148-R186).

Because the Defendants were the prevailing party in a dispute concerning the terms of the Annexation Agreement, the clear and unambiguous intent of the Agreement allows them to recover their costs and attorney's fees from the Village pursuant to Subsection J. To hold otherwise would nullify either Subsection J or Subsection M, rendering one meaningless and mere surplusage. Neither is permissible. Neither Subsection J or Subsection M are meaningless or mere surplusage,

and both provisions must be given effect. Doing so requires this Court to uphold the Trial Court's March 17, 2021 adjudication and the June 2, 2021 judgment awarding the Defendants their reasonable attorney's fees and costs.

C. The Trial Court's Interpretation of the Annexation Agreement Was Accurate and Is Incorporated Herein.

Contrary to the assertions made by the Village to the Second District Appellate Court, the Trial Court properly interpreted the Annexation Agreement, including rejecting each of the arguments raised by the Village on appeal. (R148-R186). This includes, but is not limited to, rejecting the Village's misguided arguments that the Defendants have asserted contradictory positions in this case (they have not); that Subsection J of the Annexation Agreement only contemplates awarding attorney's fees in breach of contract actions between the contracting parties (which would improperly render Subjection M meaningless and superfluous); and that the Agreement's other provisions demonstrate an intent not to award attorney's fees to non-parties who prevailed in a dispute over the Agreements terms (which would improperly render Subjection J meaningless and superfluous). (R148-R186). The Circuit Court's interpretation remains correct, and in addition to the reasons set forth herein, the Defendants adopt the Trial Court's thoughtful and precise interpretation of the Annexation Agreement and urge this Court to do the same. (*Id.*).

D. If Any Ambiguities Exist in the Annexation Agreement They Must Be Construed Against the Village.

As set forth above, the plain language of the Annexation Agreement is not ambiguous and is subject to only one reasonable interpretation. This is the interpretation proffered by the Defendants herein and that was adopted by the Circuit Court. But even if it could be argued the Annexation Agreement's attorney's fees provisions contain ambiguities and are subject to more than one reasonable interpretation, those ambiguities must be interpreted against the Village, who

was solely responsible for drafting the Annexation Agreement. A contract is ambiguous only if it is susceptible to more than one reasonable interpretation. *Zwayer v. Ford Motor Credit Co.*, 279 Ill.App.3d 906, 910 (1st Dist. 1996). A contract is not ambiguous simply because the parties disagree as to its meaning. *Id.* However, where a contract contains ambiguous terms, those terms must be interpreted against the drafter. *Id.* In this case, the Annexation Agreement was drafted by the Village. (C695). As such, any ambiguity must be interpreted against the Village and in favor of the Defendants, which would mean the Defendants' (and the Circuit Court's) interpretation of Subsection J must be applied.

E. The Doctrine of Judicial Estoppel Does Not Apply.

The Village has also argued the Defendants should be judicially estopped from securing an award of their attorney's fees and costs because the Circuit Court previously ruled the Defendaants were not successors or contractual assigns that could be held liable for the alleged breach of the Annexation Agreement. This argument is also without merit.

The purpose of the doctrine of judicial estoppel is to protect the integrity of the judicial process by prohibiting parties from "deliberately changing positions" according to the exigencies of the moment. *Seymour v. Collins*, 2015 IL 118432, ¶¶ 36-37. Courts therefore require five prerequisites before a court may invoke the doctrine of judicial estoppel. *Id.* The party to be estopped must have: (1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding and received some benefit from it. *Id.* Significantly, judicial estoppel is an equitable doctrine invoked by the court at its discretion. *Id.*

In this case, the Village has repeatedly tried to cling to the unfounded belief the Defendnts have either admitted to successor liability (which they have not) or are now trying to change their position in order to claim rights only a successor party to the Annexation Agreement can enforce. Neither is true and both arguments must be rejected. The Defendants have never taken two factually inconsistent positions. They have never and are not now claiming to be successors or contractual assigns capable of enforcing all of the covenants and requirements owed by the Appellant under the Annexation Agreement. (C8-C990). They have always maintained they are not successors or assigns. (*Id.*). What the Village complains, is the Defendants' assertion that they are the prevailing party of ***any dispute*** concerning the terms of the Annexation Agreement, and/or intended third-party beneficiaries under the Annexation Agreement. (C805-C810). This is not a factually inconsistent position. Nor can anything the Defendants have filed or testified to in the trial court proceedings be construed as intending to or causing the Circuit Court to accept the truth of two factually inconsistent positions. Rather, the Defendants' position reflects their accurate interpretation of the Annexation Agreement and relevant case law, which precludes them from being deemed contractual successors and therefore held liable for breaches of the Annexation Agreement, but which entitles them to an award of their attorney's fees and costs as the prevailing party in a dispute concerning the terms of the Annexation Agreement.

The Defendants have never taken two factually inconsistent positions, and certainly did not do so in separate judicial or quasi-judicial administrative proceedings. There has been only one action before the same trial court. The doctrine of judicial estoppel is therefore inapplicable to these proceedings. Even if it were, the Village has failed to explain how the Circuit Court's rejection of the doctrine was an abuse of discretion. It was not. The Village's request for the

Second District Appellate Court to apply the doctrine of judicial estoppel was therefore improper and unwarranted, and this Court must disregard the Village's argument now.

F. The Village Has Not Raised and Therefore Waived Any Argument That the Circuit Court Abused Its Discretion or Otherwise Erred in Entering Judgment Against It.

The Village also has not argued on appeal that the Circuit Court somehow abused its discretion or otherwise erred in receiving evidence prior to entering Judgment on June 2, 2021. The Village has therefore waived any argument that the Circuit Court abused its discretion and as such the Circuit Court's June 2, 2021 judgment cannot be reversed.

With limited exceptions, such as issues affecting the appellate court's jurisdiction, points not argued in an appellant's opening brief are waived. *CF SBC Pledgor I 2012-1 Tr. v. Clark/Sch., LLC*, 2016 IL App (4th) 150568, ¶ 30; see also *Morgan*, 343 Ill.App.3d at 738. In the Village's appeal, it failed to argue or claim that the Circuit Court somehow abused its discretion or otherwise erred in awarding the Defendants their reasonable and necessary attorney's fees and costs. Instead, the Village simply argued why the Circuit Court erred on March 17, 2021 when it held the Defendants had a contractual right to their attorney's fees and costs under Subsection J of the Annexation Agreement. But this is an issue the Village has not actually appealed. Accordingly, even if the Appellate Court had jurisdiction over this matter (which the Defendants assert it did not), the only basis to overturn the Circuit Court's June 2, 2021 judgment would be to argue the Circuit Court abused its discretion or otherwise committed reversible error during the June 2, 2021 evidentiary hearing on the reasonableness and necessity of the Defendants' attorney's fees. Since the Village has made no such argument on appeal, any such argument is now waived.

For each of the foregoing reasons, and those urged during the trial court proceedings, the Defendants have standing to recover their costs and attorney's fees under the unambiguous terms

set forth in Section 28, Subsection J, of the Annexation Agreement. Even if there were ambiguities in the Annexation Agreement (which there are not), those ambiguities must be construed against the Village. Most importantly, the Village has waived any argument by failing to raise the issue on appeal. This Court should therefore uphold the Trial Court's March 17, 2021 order and its June 2, 2021 judgment in their entirety.

V. THE APPELLATE COURT LACKED JURISDICTION BECAUSE THE VILLAGE'S NOTICES OF APPEAL DID NOT CONTAIN ANY PRAYER FOR RELIEF.

Lastly, this Court should consider whether the Second District Appellate Court had jurisdiction over the Village's appeals. Both of the Village's Notices of Appeal are critically deficient and fail to confer the Appellate Court with jurisdiction because neither identify any relief the Village is requesting. The Appellate Court therefore should have dismissed the Village's appeals for lack of jurisdiction.

Supreme Court Rule 303(b)(2) provides that a notice of appeal "shall specify the judgment…or ***other orders appealed from*** and ***the relief sought*** from the reviewing court." Ill. S.Ct. R. 303(b)(2) - emphasis added. Without a properly filed notice of appeal, the appellate court lacks jurisdiction over the matter and is obliged to dismiss the appeal. *Gen. Motors Corp.*, 242 Ill.2d at 175–76; see also *McGill v. Garza*, 378 Ill.App.3d 73, 75 (2007); see also *In re J.P.*, 331 Ill.App.3d 220, 234 (1st Dist. 2002)(When an appeal is taken only from a specific judgment, the appellate court is without jurisdiction to review any other orders or adjudications not specified in or fairly inferred from the notice of appeal). In order to comply with Supreme Court Rule 303 and confer the appellate court with jurisdiction, a notice of appeal therefore needs to state the judgment complained of, any orders incorporated therein, and the relief sought so that the successful party is advised of the nature of the appeal. *In re Custody of R.W.*, 2018 IL App

(5th) 170377, ¶ 48; see also *Gen. Motors Corp. v. Pappas*, 242 Ill.2d 163, 175–76 (2011)(Appellate courts only have jurisdiction over the orders specified in the notice of appeal); see also *Morgan v. Richardson*, 343 Ill.App.3d 733, 738 (5th Dist. 2003)(Appellate Court has an independent and ongoing duty to consider its jurisdiction before considering the merits of the case).

In this action, the Village's Notices of Appeal only states that the Village is appealing the Circuit Court's December 4, 2020 dismissal and June 2, 2021 judgment. The Villlage's Notices do not identify what, if any, relief the Village was seeking from the Appellate Court. This was insufficient notice to confer the Appellate Court with jurisdiction over any issue raised in the Village's appeal. Because the Appellant Notice of Appeal does not contain any prayer for relief and fails to specify, or even infer, that the Appellant is also appealing the Trial Court's March 17, 2021 Order, it is unquestionably insufficient under Supreme Court Rule 303 and fails to provide this Court with jurisdiction. The Appellant's appeal must therefore be dismissed with prejudice.

VI. SUMMARY.

The reasoning followed in the *Doyle*, *City of Elgin*, and *United City of Yorkville* opinions is sound and establishes a workable framework not just for municipalities drafting annexation agreements, but also original developers and their successors, as well as subsequent purchasers of small or large portions of the annexed property. Conversely, the reasoning adopted by the Second District Appellate Court in its decision in this case, which holds an annexation agreement need not include language that expressly identifies which classes of subsequent purchasers may be liable for huge financial obligations, is inherently unworkable. This is especially true in this case where the Appellate Court's decision to make the Defendants liable as successors ultimately relies on assumptions of fact not supported by the terms of the Annexation Agreement or the record on appeal in order to create distinctions in subsequent owners that simply do not exist and that were

created arbitrarily by the Appellate Court. Specifically, the Appellate Court distinguishes between subsequent "homeowners" and "developers." (A-1). This is even though no such distinction exists in the Annexation Agreement and the facts relied upon by the Appellate Court to create this distinction are entirely absent in the record on appeal. (C1-C990). Specifically, while holding the Defendants are somehow a "successor" who may be held liable under the Annexation Agreement, the Appellate Court distinguishes between purchasers of multiple lots within the annexed property and individual homeowners, holding "it of course does not follow that individual homeowners are similarly obligated under the Annexation Agreement." This ruling appears to be based on the misapprehension and incorrect assumption that all of the current single-family homeowners living within the annexed property are living in portions of the property where construction of the public improvements contemplated by the Annexation Agreement have been completed. (A-1). This fact was not alleged in the Village's Third Amended Complaint; is not supported by the record on appeal; and is factually inaccurate. (C1-C990). There are single family homeowners whose residences are located in portions of the property where construction of the public improvements contemplated by the Annexation Agreement have not been completed. By misapprehending and assuming facts not supported by the record, the Second District Appellate Court's decision creates arbitrary distinctions between subsequent owners that is not contemplated, defined, or articulated in the Annexation Agreement. The Second District Appellate Court's decision also holds that the Annexation Agreement intended to hold subsequent landowners (but not individual homeowners) responsible for their pro-rata share of any unfinished construction and improvements, when no such language to this effect exists in the Annexation Agreement and this assertion is contrary to the parties' stated intent of requiring the original landowner to complete all of the construction and improvements contemplated by the Agreement or risk losing the irrevocable letter of credit that

the Annexation Agreement required to be posted. (C1-C990). By relying on terms that do not exist in the Annexation Agreement (and that are unsupported by the record on appeal), the Appellate Court has created a rule of law that prevents any predictability in how annexation agreements will be interpreted by the courts moving forward. This rule of law destroys the predictability afforded by the *Doyle*, *City of Elgin*, and *United City of Yorkville* opinions, which require annexation agreements to include clear and unambiguous terms. So, while the rule followed in *Doyle*, *City of Elgin*, and *United City of Yorkville* will lead to predictability and stability, and therefore less litigation clogging Illinois' court system, the Second District Appellate Court's opinion in this cae will ultimately lead to more litigation, since the lack of clarity providing in annexation agreements (like the one at issue in this case) will require the courts to be called upon to decide what classes of subsequent landowners can and cannot be held liable under annexation agreements. The courts should not be placed in this position when the drafters of annexation agreements are in the best position to accomplish this task.

This Court should therefore establish a singular rule of law establishing when and under what circumstances owners of part, but not all, of an annexed parcel of land may be held liable for an original owner's breach of the applicable annexation agreement. The rule of law that is best equipped to provide certainty, predictability, and further the public policy goal of the free alienability of Illinois real property, is the one adopted in *Doyle*, *City of Elgin*, and *United City of Yorkville*. The Defendants therefore respectfully implore this Honorable Court to likewise adopt this rule of law, and to thereby reinstate the ruling of the Circuit Court dismissing with prejudice the Village's Third Amended Complaint.

CONCLUSION

For the foregoing reasons, the Defendants-Appellants, Kirkland Properties Holdings Company, LLC I and Kirkland Properties Holdings Company, LLC II , respectfully request that this Honorable Court reverse the decision of the Second District Appellate Court and reinstate the judgment of the Circuit Court , and for such other and further relief deemed just and equitable under the circumstances.

Respectfully submitted.
KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC I and KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC II

By: _____
One of Their Attorneys

RULE 341(c) CERTIFICATE OF COMPLIANCE

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 47 pages.

_____
Colin W. Anderson

No. 128612

IN THE
SUPREME COURT OF ILLINOIS

VILLAGE OF KIRKLAND, a municipal corporation,	)	On Appeal from the Appellate Court of of Illinois, Second Judicial District, No. 2-21-0301
Plaintiff-Appellee,	)	
	)	There on appeal from the Circuit Court of 23rd Judicial Circuit, DeKalb County,Illinois No. 2019 L 00003
KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC I and KIRKLAND PROPERTIES HOLDING COMPANY, LLC II	)	The Honorable Bradley J. Waller, Judge Presiding
Defendants-Appellants.	)	

NOTICE OF FIILING AND CERTIFICATE OF SERVICE

The undersigned, being first duly sworn, deposes and states that he caused to be filed an electronic copy of the Defendants-Appellants' *Brief and Appendix* and this Notice of Filing and Certificate of Service, with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and notice was provided to all parties to this case, or their attorneys of record, via electronic mail and by placing the documents in an envelope with postage fully prepared, which was placed in a mailbox located at 54 W. Downer Place, Aurora, Illinois 60506, and mailed via U.S. Mail, on November 3, 2022, addressed to:

Jennifer J. Gibson
Zukowski, Rogers, Flood & McCardle
Attorneys for Plaintiff-Appellant
50 North Virginia Street
Crystal Lake IL 60014
jgibson@zrfmlaw.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Colin W. Anderson

APPENDIX

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Nos. 2-20-0780 & 2-21-0301 cons.
Opinion filed April 21, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE VILLAGE OF KIRKLAND, Plaintiff-Appellant, v. KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC I, and KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC II, Defendants-Appellees.	)	Appeal from the Circuit Court of De Kalb County. No. 19-L-33 Honorable Bradley J. Waller, Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court, with opinion.
Justices McLaren and Hudson concurred in the judgment and opinion.

OPINION

¶ 1 On August 27, 2020, plaintiff, the Village of Kirkland (Village), filed its third amended complaint against defendants, Kirkland Properties Holdings Company, LLC I, and Kirkland Properties Holdings Company, LLC II (hereinafter KPHC I, KPHC II, and collectively KPHC). In the complaint, the Village alleged that KPHC breached a 2003 recorded annexation agreement (Annexation Agreement) that the Village entered into with the National Bank and Trust of Sycamore as trustee of trust No. 4235000 (landowner), the original owner of the subject property, a 114-acre subdivision. The Village alleged that KPHC became bound by the terms of the Annexation Agreement as a successor owner of record to the landowner when KPHC bought *a*

portion of the subject property from an entity, Plank Road, LLC (Plank) (not a party to this appeal), which had, in turn, acquired the property from the landowner. Specifically, the complaint alleged that KPHC breached the Annexation Agreement by refusing the Village's request for a letter of credit in the amount proportionate to the number of lots KPHC owned in the subdivision, to secure the completion of roads in the subdivision as it was developed. The Village sought damages for breach of contract or, in the alternative, injunctive relief in the form of specific performance. KPHC moved to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2020)), arguing at the hearing on the motion that, although the Annexation Agreement was a covenant that ran with the land, the Annexation Agreement would not confer successor status to an entity that purchased only a portion of the subject property as opposed to the whole of the subject property. The trial court, relying primarily on *Doyle v. Village of Tinley Park*, 2018 IL App (1st) 170357, and briefly referencing *United City of Yorkville v. Fidelity & Deposit Co. of Maryland*, 2019 IL App (2d) 180230, agreed with KPHC and dismissed the case with prejudice. The Village timely appeals (No. 2-20-0780), arguing that *Doyle*, a First District case, is distinguishable and that *Yorkville*, a Second District case, actually supports its position.

¶ 2 Having secured the dismissal of the complaint against it, KPHC moved for attorney fees pursuant to the terms of the Annexation Agreement. The trial court determined that the Annexation Agreement entitled KPHC, as the prevailing party in a lawsuit brought pursuant to the Annexation Agreement, to fees. The Village appeals (No. 2-21-0301), arguing, *inter alia*, that the court's earlier ruling that KPHC was not bound by the terms of the Annexation Agreement precluded it from awarding attorney fees under the Annexation Agreement. The two appeals, Nos. 2-20-0780 and 2-21-0301, have been consolidated for the purposes of argument and disposition (but not briefing). For the reasons that follow, we reverse the trial court's ruling that KPHC was not bound

by the terms of the Annexation Agreement. As a result, KPHC is no longer the prevailing party and we vacate the award of attorney fees.

¶ 3

I. BACKGROUND

¶ 4 The following background information is taken largely from the allegations of fact set forth in the third amended complaint, which must be taken as true at this stage in the proceedings. See *Cochran v. Securitas Security Services USA, Inc.*, 2017 IL 121200, ¶ 11.

¶ 5

A. The Annexation Agreement

¶ 6 On May 5, 2003, the Village entered into the Annexation Agreement with the sole, original owner of the subject property, the landowner, at that time, the Trust, the beneficiaries of which were David R. Rood, Barbara L. Rood, Robert D. Rood, and Ann M. Rood. As to its term and the question of successorship, the Annexation Agreement provided that it was for a term of 20 years and that it was "made pursuant to and in accordance with [sections 11-15.1-1 to 11-15.1-5] of the [Municipal] Code." Section 11-15.1-4 of the Municipal Code, in turn, provides: "Any annexation agreement executed pursuant to this Division 15.1 *** shall be binding upon the *successor owners of record of the land which is the subject of the agreement* and upon successor municipal authorities of the municipality and successor municipalities." (Emphasis added.) 65 ILCS 5/11-15.1-4 (West 2002). The Annexation Agreement, section 28, paragraph I, likewise provided that it was "[b]inding on Assigns. All terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, their heirs, executors, administrators, *successors*[,] and assigns." (Emphasis added.)

¶ 7 The Annexation Agreement described the subject property as consisting of 114.27 acres located immediately north of Illinois Route 72 and presently contiguous with the corporate limit of the Village. It provided in its introductory terms that the subject property was to be developed

and specifically that (1) the landowner desired to annex the subject property to the Village "to develop thereon a residential subdivision substantially in accordance with a preliminary subdivision plat *** which is attached hereto," and (2) the parties desired to develop the subject property "as conveniently as may be and subject to the terms and conditions hereinafter contained."

¶ 8 The Annexation Agreement placed obligations on the Village, including but not limited to the following. The Village was to annex the subject property to the Village. It was to rezone the subject property for single-family residential homes and approve and record two plats for subdivision. It was to provide water mains, access to Village treatment plant services, and potable water for the subdivision.

¶ 9 The Annexation Agreement also placed obligations on the landowner, including but not limited to those set forth in sections 10 and 14. Section 10 provided that the landowner was to construct all roadways required to be developed on the subject property. With certain exceptions, the roadways were to be constructed in accordance with the Village's standards. Once 50% of the buildings in a particular phase were occupied, no further occupancy permits would be issued unless the road was complete to a certain stage of development. Once 80% of the buildings in a particular phase were occupied, no further occupancy permits would be issued unless the road was complete to a certain, later stage of development. Upon the completion of the road, the Village would accept the improvements and thereafter maintain the road.

¶ 10 Section 14 provided that the landowner would secure an irrevocable letter of credit from a financial institution payable to the Village to guarantee the quality construction of all public facilities to be constructed at any unit or stage of development for which approval is sought. The letter of credit would be in the amount of 100% of the contract costs of construction in the unit or

stage of development or 125% of the landowner engineer's contract estimate in the unit or stage of development.

¶ 11 Other sections of the Annexation Agreement, including those addressing stages and phases of development (section 5) and the dedication of improvements (section 13), will be discussed later in conjunction with our interpretation of the agreement.

¶ 12 B. The Transfer of Portions of the Subject Property

¶ 13 On November 30, 2011, the landowner sold a portion of the subject property to Plank, as is documented in exhibit I attached to the Village's complaint. At that time (and at all times relevant to this appeal), the subject property had been divided into 82 lots across two phases of development. Plank purchased 41 lots, some of which were located in phase one and some of which were located in phase two.

¶ 14 On January 25, 2017, Plank sold 34 lots to KPHC. As a result, KPHC I owned 15 of 56 lots in phase one, and KPHC II owned 19 of 26 lots in phase two. The third amended complaint alleged that "the contract by which [KPHC] acquired *** the lots provides that title to the lots was subject to all 'agreements with any municipality regarding the development of the Property.' "

¶ 15 C. The Village Seeks KPHC's Performance

¶ 16 Meanwhile, as KPHC does not dispute, the Village continued to perform under the Annexation Agreement in that it annexed the subject property to the Village, rezoned the subject property to allow for single-family residences, and approved two final plats for subdivision. It also provided lots within the subdivision with access to Village treatment plant services, water mains, and potable water.

¶ 17 On May 8, 2019, the Village sent KPHC letters of demand based on sections 10 and 14 of the Annexation Agreement. It requested that KPHC deposit a letter of credit for an amount

proportionate to the number of lots it owned in the development and/or the road frontage of such lots in order to secure the completion of the roads in the development. The Village calculated that, based on the total contract estimate for the completion of the roads in the entire development and KPHC's share of ownership, KPHC's letter of credit was to be for $357,295. KPHC did not supply the letter of credit, and the Village filed suit. Following a series of amended pleadings, KPHC moved to dismiss the Village's third amended complaint, the operative complaint in this case, pursuant to section 2-615 of the Code of Civil Procedure.

¶ 18 D. The Trial Court's Ruling

¶ 19 On December 4, 2020, the trial court conducted a hearing on KPHC's motion to dismiss. Primarily, the parties debated whether KPHC was a successor owner of record to the subject property such that it was bound by the terms of the Annexation Agreement. KPHC acknowledged that the Annexation Agreement concerned a covenant that ran with the land. The question for the court, it continued, was *what* land. In KPHC's view, the covenant ran with the land in its entirety, only. Once the land was sold in any configuration less than its entirety, the covenant ceased to apply. KPHC argued that its position was supported by *Doyle*, which it asserted stood for the proposition that, where the original parties to an annexation agreement intend for the covenant to run with the land, even when subdivided and portioned off to different developers, the annexation agreement must so expressly provide.

¶ 20 The Village responded that the Annexation Agreement concerned a covenant that ran with the land whether in its entirety or subdivided and portioned off to different developers. The Village argued that the Annexation Agreement was premised upon and contemplated subdivision of the land. The Village referred, specifically, to those provisions concerning infrastructure and storm water requirements that would be "completely unnecessary" if the Annexation Agreement were to

apply only to a property owner who retained the whole acreage. It also argued that KPHC's interpretation of the Annexation Agreement led to an absurd result in that, under KPHC's interpretation, KPHC would have no standing to sue the Village to compel it to fulfil its obligation to provide water service, for example, merely because the property had been subdivided. If, in a hypothetical scenario, KPHC owned 99 of 100 lots, KPHC still would not have standing. Finally, the Village argued that *Doyle* was factually distinguishable, factually unique, and had limited precedential value.

¶ 21 In rebuttal, KPHC acknowledged that, under its interpretation, it had no standing to compel the Village to fulfil its obligations under the Annexation Agreement: "[T]rust me, that's a problem in this case, because we have a neighborhood that is not developed, despite [the Village] once having an adequate security bond. So this ruling will cut both ways." KPHC also asserted that the Second District embraced the *Doyle* decision in *Yorkville*.

¶ 22 The trial court granted KPHC's motion to dismiss. It explained that section 11-15.1-1 of the Municipal Code provides that an annexation agreement is a contract between a municipality and an owner of land. Section 11-15.1-4 further provides that the annexation agreement will be binding on successor owners of the land that is the subject of the agreement. In this case, the subject property "consists of 114.27 acres located north of [Route 72]. That is for all intents and purposes the entire subdivision." It concluded:

> "The agreement, like [section 11-15.1-4], is silent on the purchase *** of less than all of the *** subject property.
>
> *Doyle* states that if the drafters [of an annexation] agreement intended to confer successor status upon each and every purchaser of a lot within a subdivision as opposed to a developer who purchased the entire subdivision, the agreement would have expressly

stated successor owners of record of the subject property *** *and/or any portion thereof.* It didn't in *Doyle* and it doesn't here." (Emphasis added.)

The court also referenced *Yorkville*, finding it distinguishable in that the annexation agreement in that case contained a provision that acknowledged that a successor developer could own a portion of the subject property. The court also stated that the Village had failed to plead the existence of any other form of privity between itself and KPHC, such as contractual assignment. In the court's view, that the deed between Plank and KPHC stated that KPHC took title subject to the terms of any municipal agreement merely raised the question of how the terms of the Annexation Agreement should be interpreted. As such, the court determined that the Village had failed to state a cause of action and granted KPHC's section 2-615 motion to dismiss.

¶ 23 The trial court's written order provided: "For the reasons stated on the record, defendant's motion to dismiss is granted." The court awarded KPHC attorney fees pursuant to a fee-shifting provision in the Annexation Agreement. This properly noticed appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, the Village challenges the trial court's section 2-615 dismissal of its third amended complaint for breach of contract (seeking damages) and injunctive relief (seeking specific performance). To properly plead the first of these actions, breach of contract, a plaintiff must allege facts supporting the following elements: (1) the existence of an operative contract, (2) a breach of the contract, (3) plaintiff's performance of its duties under the contract, and (4) damages. *Village of Orland Park v. First Federal Savings & Loan Ass'n of Chicago*, 135 Ill. App. 3d 520, 529 (1985). As to the second action, section 11-15.1-4 of the Municipal Code provides that any party to an annexation agreement "may by civil action, mandamus, injunction[,] or other proceeding, enforce and compel performance of the agreement." 65 ILCS 5/11-15.1-4

(West 2020). The question presented by each of these claims is whether KPHC was bound by the terms of the Annexation Agreement, as a successor owner of record of land subject to the agreement, such that it can be found to have breached the agreement by failing to provide a letter of credit and such that it can be compelled to provide the letter of credit. The Village argues that KPHC is bound by the terms of the Annexation Agreement because the Annexation Agreement is a covenant that runs with the land and section 11-15.1-4 of the Municipal Code as well as the Annexation Agreement itself provide that it is binding on *successors* of the land that is the subject of the agreement. The Village contends that the trial court erred in determining that KPHC was not bound by the terms of the Annexation Agreement as a successor owner of record because KPHC owned only a portion of the land that was the subject of the Annexation Agreement. It also challenges the trial court's decision to award KPHC attorney fees. For the reasons that follow, we agree that KPHC was a successor owner of record of the subject property even though it owned only a portion of the subject property. Because KPHC is no longer the prevailing party, it is not entitled to attorney fees.

¶ 26 Preliminarily, we address KPHC's argument that the Village cannot state a claim for injunctive relief in the form of specific performance by securing a letter of credit, because the Village has an adequate remedy at law precluding equitable relief—damages under its breach of contract claim. Specific performance is a form of injunctive relief. *New Park Forest Associates II v. Rogers Enterprises, Inc.*, 195 Ill. App. 3d 757, 761 (1990). To be sure, ordinarily, injunctive relief is not appropriate when there is an adequate remedy at law, here, damages. *Id.* However, when, as here, a party grounds its request for specific performance in section 11-15.1-4, which specifically provides for injunctive relief, the action remains viable despite the availability of other possible avenues of relief. See *Orland Park*, 135 Ill. App. 3d at 528-29.

¶ 27 A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint and asserts that the plaintiff has failed to state a cause of action. 735 ILCS 5/2-615 (West 2020). When ruling on a section 2-615 motion to dismiss, the trial court must accept as true all well-pled facts, as well as any reasonable inferences that may arise from them. *Cochran*, 2017 IL 121200, ¶ 11. We review section 2-615 dismissals *de novo*. *Id.* Here, the trial court's dismissal was guided by its interpretation of section 11-15.1-4 of the Municipal Code and the Annexation Agreement, issues that are also subject to *de novo* review. *Valerio v. Moore Landscapes, LLC*, 2021 IL 126139, ¶ 20.

¶ 28 When construing a statute or contract, the primary goal is to give effect to the intent of the parties who drafted the document. *Yorkville*, 2019 IL App (2d) 180230, ¶ 74. The best indicator of intent is the language of the document, given its plain and ordinary meaning. *Id.* The court will not read into the document a provision it does not contain. See *Carrillo v. Jam Productions, Ltd.*, 173 Ill. App. 3d 693, 698 (1988). The document is to be read as a whole (*Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007)) and should be reasonably interpreted to avoid absurd results (*Foxfield Realty, Inc. v. Kubala*, 287 Ill. App. 3d 519, 524 (1997)).

¶ 29 As we look to the text of the statute and the Annexation Agreement, we are mindful that public policy favors the enforcement of annexation agreements. *Orland Park*, 135 Ill. App. 3d at 526. Annexation agreements are critical to the successful implementation of municipal improvements. See *id.* As the *Orland Park* court explained:

> "The authorization of preannexation agreements by statute, such as section 11-15.1-1, serves to further important governmental purposes, such as the encouragement of expanding urban areas and to do so uniformly, economically, efficiently and fairly, with optimum provisions made for the establishment of land use controls and necessary municipal improvements including streets, water, sewer systems, schools, parks, and

> similar installations. This approach also discourages fragmentation and proliferation of special districts. Additional positive effects of such agreements include controls over health, sanitation, fire prevention and police protection, which are vital to governing communities." *Id.*

One of the ways the legislature has ensured that annexation agreements will be enforced is by empowering and holding accountable successor owners to the terms of the annexation agreement. *Id.*

¶ 30 As mentioned, section 11-15.1-4 of the Municipal Code addresses successor status and provides:

> "Any annexation agreement executed pursuant to this Division 15.1 *** *shall be binding upon the successor owners of record of the land which is the subject of the agreement* and upon successor municipal authorities of the municipality and successor municipalities. Any party to such agreement may by civil action, mandamus, injunction or other proceeding, enforce and compel performance of the agreement." 65 ILCS 5/11-15.1-4 (West 2002).

¶ 31 Also as mentioned, section 28 of the Annexation Agreement provides that it is binding on successors: "Binding on Assigns. All terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, their heirs, executors, administrators, *successors*[,] and assigns." (Emphasis added.)

¶ 32 Turning to the parties' specific arguments, we first consider whether the Annexation Agreement is a covenant that runs with the land. When a covenant runs with the land, the benefit or obligation of the covenant will pass with ownership. *La Salle National Trust, N.A. v. Village of Westmont*, 264 Ill. App. 3d 43, 71 (1994). An annexation agreement is a covenant that runs with

the land if three requirements are met: (1) the grantor and grantee intended it to run with the land, (2) it touches and concerns the land, and (3) there is privity of estate between the party claiming the benefit of the covenants and the party resting under the burden of the covenant. *Streams Sports Club, Ltd. v. Richmond*, 99 Ill. 2d 182, 188 (1983).

¶ 33 Here, as to the first requirement, language commonly used to demonstrate intent to create a servitude includes statements that the interests created "run with the land" or that they "bind" to the benefit of "heirs," "assigns," or "successors" of the drafting parties. Restatement (Third) of Property § 2.2 cmt. d (2000). Section 28 of the Annexation Agreement stated that it was "binding upon *** [the] heirs, executors, administrators, successors[,] and assigns," and the parties to the agreement recorded it. This demonstrates that the parties intended the Annexation Agreement to run with the land.

¶ 34 As to the second requirement, a covenant touches and concerns the land if it "affects the use, value and enjoyment *** of the property." (Internal quotation marks omitted.) *In re Application of the County Treasurer & ex officio County Collector*, 373 Ill. App. 3d 679, 690 (2007). Here, the very purpose of the Annexation Agreement is to annex the property to the Village so that it can be developed. The agreement addresses, *inter alia*, the annexation and platting of the subject property, stormwater drains on the subject property, wastewater treatment on the subject property, well and water supply and distribution on the subject property, and construction of roadways on the subject property. This demonstrates that the Annexation Agreement affects the use, value, and enjoyment of the subject property.

¶ 35 As to the third requirement, privity is defined as "[t]he connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property)." Black's Law Dictionary (11th ed. 2019). Privity of

estate, in particular, is defined as "[a] mutual or successive relationship to the same right in property." *Id.* The Annexation Agreement clearly provides that it is binding on successors, and thus, the Village and a successor owner each have a legally recognized interest in the same subject matter—the development of the subject property.

¶ 36 Though KPHC at oral argument half-heartedly argued that the Annexation Agreement did not run with the land, this is contrary to the position it took at the December 4, 2020, hearing below, where it conceded that the Annexation Agreement was a covenant that ran with the land. Consistent with our foregoing analysis, not to mention the prohibition against taking a contrary position on appeal (*Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 800 (2009)), we hold KPHC to its position that the Annexation Agreement runs with the land. But as KPHC notes, this raises the question "what land?"

¶ 37 Section 11-15.1-4 of the Code, which provides that an annexation agreement "shall be binding upon the successor owners of record *of the land which is the subject of the agreement*" (emphasis added) (65 ILCS 5/11-15.1-4 (West 2002)), neither expressly provides for nor expressly precludes the application of the terms of the annexation agreement when a subsequent owner owns just a *portion* of the land that is the subject of the agreement, as opposed to all the land that was subject to the agreement. Similarly, the Annexation Agreement, which provides that it is governed by the Municipal Code and is binding on "the parties hereto, [and] their *** successors," neither expressly provides for nor expressly precludes the application of its terms to subsequent owners of a portion of the property originally subject to the Annexation Agreement. KPHC, citing *Doyle*, argues that, unless the Annexation Agreement expressly provides that the agreement is binding on successor owners of the subject property *or any portion thereof*, then it is binding only on successor owners of the subject property in its entirety. The Village, citing *Yorkville*, argues that there are

no magic words and that, when read in its entirety, it is clear that the drafters of the Annexation Agreement contemplated that the subject property would be subdivided and developed in phases, potentially by more than one developer. As such, the Village urges, the Annexation Agreement continues to apply to a subsequent owner who owns just a portion of the subject property. Our review of *Doyle* and *Yorkville*, as well as another Second District case, *City of Elgin v. Arch Insurance Co.*, 2015 IL App (2d) 150013, leads us to conclude that the Village is correct. We summarize the relevant portions of *Doyle*, *Yorkville*, and *Elgin* below.

¶ 38 A. *Doyle*, *Yorkville*, and *Elgin*

¶ 39 *Doyle* addressed whether the purchasers of a single residential home built on a lot encompassed by a 1990 annexation agreement could sue the developer, pursuant to the annexation agreement, for the improper design and construction of a sewer system. *Doyle*, 2018 IL App (1st) 170357, ¶ 1. The agreement defined the subject property as an 828-acre parcel of land contiguous with the village. *Id.* ¶ 4. The agreement obligated the developer to design and construct a sewer system. *Id.* In 2004, the developer and the homeowners entered into a contract to build one residential home on a single lot within the subdivision. *Id.* ¶ 5. The contract contained a limited warranty requiring the developer to fix any defects due to faulty construction within one year from the date of closing. *Id.* In 2007, the homeowners began noticing problems with the sump pump and the sewer system. *Id.* ¶ 6. Between 2009 and 2011, the homeowners worked with the village to repair the sewer system as it affected their home, but the home was structurally damaged in the interim. *Id.* ¶¶ 7-16.

¶ 40 The homeowners filed suit against the developer, alleging that it had breached its duty under the annexation agreement to install a working sewer system. *Id.* ¶ 17. The homeowners asserted standing to sue under the annexation agreement as successors to the agreement to the

extent that they were successor owners of record under the agreement's successor liability clause. *Id.* The agreement's successor liability clause provided: " 'This Agreement shall be binding upon and inure to the benefit of the parties hereto, successor owners of record of the Subject Property, assignees, lessees and upon any successor municipal authorities of said Village and successor municipalities ***.' " *Id.*

¶ 41 The trial court dismissed the homeowners' claim against the developer, determining that they did not have standing to sue the developer for breach of the annexation agreement. *Id.* ¶ 20. In doing so, it concluded that, "although the annexation agreement provided for successor liability, the [homeowners] were successors to [the developer] and not the village, so they could not sue [the developer] for its alleged breach of the agreement." *Id.*

¶ 42 The appellate court affirmed the trial court's dismissal, but on a different theory. The appellate court explained that neither the language of the statute nor the language of the annexation agreement supported the homeowners' position that they were "successor owners of record." *Id.* ¶¶ 30-31. Addressing the language of the statute, the court noted that the statute refers to " 'successor owners of record of the land which is the subject of the agreement' (65 ILCS 5/11-15.1-4 (West 2012)) but makes no reference to those who purchase only a small portion of that land." *Id.* ¶ 31. The court then explained: "[The homeowners] do not cite to any cases where homeowners who purchase a single lot from a larger annexed territory are considered 'successor owners of record' under the statute, nor does our research disclose any." *Id.*

¶ 43 Addressing the language of the agreement, the appellate court explained:

> "The agreement define[d] the 'Subject Property' as an 828-acre parcel of land contiguous with the village—*i.e.*, the entire subdivision. If the drafters of the agreement intended to confer successor status upon each and every purchaser of a lot within the subdivision (as

opposed to, say, a developer who purchased the entire subdivision property from [the developer]), the agreement would have said 'successor owners of record of the Subject Property *or any portion thereof*.' " (Emphasis in original.) *Id.* ¶ 30.

¶ 44 In support of its position, the appellate court reasoned that the homeowners' interpretation of the statute and the annexation agreement would lead to an absurd result. *Id.* ¶ 32. Under the homeowners' interpretation, each and every homeowner in the subdivision would stand in the developer's shoes and be bound by the developer's obligations. *Id.* As a result, the village could sue any homeowner for failing to design and construct storm sewers in accordance with the agreement. *Id.*

¶ 45 As an aside, the appellate court noted that the homeowners' argument was logically flawed along the lines of the trial court's finding. See *id.* ¶ 32 n.3. That is, even if the homeowners were successor owners of record, they would succeed to the developer's interest in the annexation agreement, not the village's, and, therefore, they could not sue the developer for breach of the annexation agreement because they would in effect be suing themselves. *Id.*

¶ 46 Our decision in *Yorkville* involved an annexation agreement between the city on one side and the owners and the original developer on the other. *Yorkville*, 2019 IL App (2d) 180230, ¶ 1. The agreement defined the subject property as a 300-acre parcel of land contiguous with the city. *Id.* ¶ 6. The agreement required the original developer to complete public improvements in the subdivision. *Id.* ¶ 1. However, before the improvements were completed, the original developer went bankrupt. *Id.* Subsequently, two new developers purchased portions of the subject property. *Id.* However, they took the position that they were not bound by the annexation agreement to complete the improvements, because, *inter alia*, each new developer owned just a portion of the subject property. *Id.* The city sued the new developers. *Id.* The trial court dismissed the city's

complaint. *Id.* ¶¶ 43-44. In reversing the trial court's dismissal, this court began by addressing the terms of the annexation agreement. See *id.* ¶ 70.

¶ 47 The annexation agreement provided that it was entered into pursuant to the Municipal Code. *Id.* Its successor liability clause provided:

> " '22. GENERAL PROVISIONS
>
> ***
>
> B. *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the OWNERS, DEVELOPER and their successors in title and interest, and upon the CITY, and any successor municipalities of the CITY. It is understood and agreed that this Agreement shall run with the land and as such, shall be assignable to and binding upon each and every subsequent grantee and successor in interest of the OWNERS and DEVELOPER, and the CITY.' " *Id.* ¶ 72.

The annexation agreement clarified that a purchaser of lots for the purpose of *personal* residential occupation was not a successor bound by the terms of the annexation agreement. *Id.* ¶¶ 72, 85, 93. Further, the annexation agreement contained a provision outside the successor liability clause, section 9, which "refer[ed] to the rights and duties of 'DEVELOPER and all successor developers of the PROPERTY or any parcel or phase thereof." (Emphasis omitted.) *Id.* ¶ 90. (The full text of section 9 was not provided.)

¶ 48 The new developers argued that allowing the purchaser of less than the entire subject property to be bound by the terms of the annexation agreement would lead to an absurd result in that " 'a purchaser who buys even one empty lot in the subdivision would be responsible for performing *all of the public improvements for the subdivision as a whole*.' " (Emphasis in original.) *Id.* This court rejected the new developers' argument, explaining that nothing in the

annexation agreement required the responsibility for public improvements to fall entirely on one developer at a time. *Id.* We noted that the agreement did not place any restrictions on the severability of the subject property. *Id.* Specifically,

> "section 22.B [(*i.e.*, the successor liability clause)] places no restriction on the number of successor developers that may exist at any given time, each having succeeded to the duties of the original developer ***. Those duties would not fall entirely on any particular one of those successor developers but would be shared among them." *Id.*

This court further noted that section 9 of the agreement "refers to the rights and duties of 'DEVELOPER and all successor developers of the PROPERTY or any parcel or phase thereof." (Emphasis omitted.) *Id.* "Construed together, section 9 and section 22.B indicate that development duties can indeed fall on a developer that owns less than the entire 'PROPERTY,' in which case the liability will be proportionate to the amount of property that the developer owns." *Id.* ¶ 99.

¶ 49 As for *Doyle*, we disagreed with its analysis of section 11-15.1-4:

> "[In analyzing] section 11-15.1-4, we think that the court should have contrasted two types of parties who purchase from the original developer a portion of subdivided land that is the subject of an annexation agreement. The first is a party who, like the plaintiffs in *Doyle*, purchases a lot in order to construct, or have constructed, a residence for himself. The second is a party—namely a developer—who purchases lots in order to construct homes for third-party buyers. We agree with the *Doyle* court that it would be unfair to impose the obligations of an annexation agreement upon the first type of purchasers. However, it would be eminently fair to impose those obligations upon the second type—developers—even though, like the first type, they do not purchase the entirety of 'the land which is the subject of the [annexation] agreement.' See 65 ILCS 5/11-15.1-4 (West 2002).

> Not uncommonly, a unitary tract of land governed by an annexation agreement is later divided and sold to different developers, as happened in this case. The public policy in favor of ensuring the fulfillment of an annexation agreement [citation] would be frustrated if the succession of duties under section 11-15.1-4 continued only as long as the land remained under common ownership." *Id.* ¶ 100.

Yorkville acknowledged that the distinction between the two types of purchasers, residential homeowners and developers, is not apparent on the face of section 11-15.1-4. *Id.* ¶ 101.

¶ 50 However, we also easily distinguished the annexation agreement at issue from that in *Doyle*. *Id.* ¶ 99. We noted that the annexation agreement referred to the rights and duties of the " 'DEVELOPER and all successor developers of the PROPERTY or any parcel or phase thereof,' " indicating that the drafters contemplated that the subject property might eventually be owned by more than one developer, whereas the annexation agreement in *Doyle* contained no such provision. (Emphasis omitted.) *Id.*

¶ 51 In considering the precedential value of *Doyle* and *Yorkville*, we begin by agreeing with the Village that *Doyle* presents an irregular and easily distinguishable fact pattern. In *Doyle*, the homeowner illogically sought to stand in the shoes of the developer, as successor, and then sue the developer, *i.e.*, itself. See *Doyle*, 2018 IL App (1st) 170357, ¶ 32 n.3. Substantively, *Doyle*'s absurd-results analysis, adopted by the trial court in the case *sub judice*, reasons one step too far. The *Doyle* court stated that, if it accepted the homeowners' interpretation of the successor liability provision that a subsequent owner of a *portion* of the subject property was a successor, it would lead to the absurd result that each and every homeowner in the subdivision would stand in the developer's shoes and be bound by the developer's obligations. *Id.* ¶ 32. While the *Doyle* court correctly concluded that it would be absurd to equate individual homeowners (who have purchased

already-developed lots for personal residential use) with successor developers (or investors involved in the development process), it does not follow that it would be similarly absurd to confer successor status on a developer who purchases a portion of the subject property.

¶ 52 As this court stated in *Yorkville*: "Not uncommonly, a unitary tract of land governed by an annexation agreement is later divided and sold to different developers, as happened in this case. The public policy in favor of ensuring the fulfillment of an annexation agreement [citation] would be frustrated if the succession of duties under section 11-15.1-4 continued only as long as the land remained under common ownership." *Yorkville*, 2019 IL App (2d) 180230, ¶ 100. Therefore, although the *Yorkville* annexation agreement expressly referred to successors who owned just a portion of the subject property, whereas the Annexation Agreement in our case does not, the public policy concerns expressed in *Yorkville* are equally compelling in the instant case.

¶ 53 The view that proportionate responsibility under an annexation agreement is a common and workable scenario is further supported by this court's opinion in *Elgin*, 2015 IL App (2d) 150013. In that case, the surety guaranteeing the original developer's performance under an annexation agreement filed a counterclaim against a successor developer. *Id.* ¶ 7. In determining that the surety's counterclaim should survive dismissal, the appellate court accepted, for the purposes of the pleading, that the successor developer was bound by the terms of the annexation agreement even though it owned just a portion of the subject property. *Id.* ¶ 21. Moreover, it rejected the successor developer's argument that the surety failed to add as necessary parties the individual homeowners who had purchased their homes from the original developer. *Id.* ¶ 39. First, it found forfeited the new developer's argument that the annexation agreement imposes on those individual homeowners an obligation to complete the improvements set forth therein. *Id.* Forfeiture aside, it noted that the annexation agreement

> "[did] not impose a universal and unlimited obligation to make all improvements anywhere in the development upon anyone who purchased property in the development. Rather, it imposes upon purchasers *the obligations 'of the Developer *** for the parcel sold.'* Thus, the obligations imposed upon any particular purchaser depend upon the obligations of [the original developer] that remain unsatisfied with respect to the specific 'parcel sold.' If these obligations have already been satisfied with respect to the parcel—as would be the case where [the original developer] or some other entity had already completed the improvements at issue with respect to the homes that were sold—the individual purchasing homeowners would not be subject to any liability ***. Accordingly, they would not have an interest requiring protection." (Emphasis added.) *Id.* ¶ 40.

Thus, this court in *Elgin* declined to subscribe to the *Doyle* court's concern that conferring successor status on those who purchase a portion of the subject property such that they will be bound by an annexation agreement would have the unintended consequence of burdening ordinary homeowners with municipal development responsibilities. With our review of *Doyle* and *Yorkville* and, to a lesser degree, *Elgin*, in mind, we turn to the Annexation Agreement.

¶ 54 B. The Annexation Agreement

¶ 55 We next consider the specific language of the Annexation Agreement, reading the agreement as a whole and with an aim to avoid absurd results. See, *e.g.*, *Gallagher*, 226 Ill. 2d at 233; *Foxfield*, 287 Ill. App. 3d at 523-24. We determine that the Annexation Agreement contemplated that the subject property would be divided and sold, potentially to different developers, who would be proportionally bound by the Annexation Agreement, which was a covenant that ran with the land.

¶ 56 The Annexation Agreement set forth in its introductory terms that the subject property was to be developed and subdivided. *Supra* ¶ 7. The agreement stated, throughout, that the property was to be developed in "stages" or "phases." For example, section 5 provides that "the Subject Property will be developed in *stages*, requiring the submittal of plats and plans for each stage or unit. *** In the event of a *phased* development, then each phase shall be complete and comply fully with all applicable laws." (Emphases added.)

¶ 57 Moreover, as noted by this court in *Yorkville*, this sort of division is amenable to practical application. See *Yorkville*, 2019 IL App (2d) 180230, ¶ 90. For example, section 14 of the Annexation Agreement, addressing the irrevocable letter of credit at issue here, is workable in the event that multiple developers separately owned portions of the subject property. Again, that provision states that the "Landowner would secure an irrevocable letter of credit *** from a financial institution payable to the Village to guarantee the quality construction of all public facilities to be constructed *at any unit or stage of development for which approval is sought.* The letter of credit would be in the amount of 100% of the contract costs of construction in the unit or stage of development or 125% of the Landowner engineer's contract estimate in the unit or stage of development." (Emphasis added.) The Village here sought a letter of credit in an amount specific to the stage of development, for roads only, not for storm drains, etc., and in accordance with KPHC's proportion of ownership.

¶ 58 Also, conferring successor status on the owner of a portion of the subject property here would not, as the *Doyle* court cautioned, result in individual residential homeowners being unduly burdened with municipal development responsibilities. For example, multiple provisions in the Annexation Agreement clarify that there is an end to any owner's obligation to participate in the development of the property. Section 27 provides that the term of the agreement is 20 years. More

critically, sections 7, 9, and 10, covering the improvements for storm drains, well and water supply, and roadways, respectively, each provide that, "upon proper completion of [the same], the Village shall promptly accept such improvements and thereafter maintain such improvements." Section 13, covering the dedication of improvements in general, also provides that the "Village shall promptly accept such improvements upon completion of construction of same and thereafter maintain such improvements." These provisions show that, following the completion and acceptance by the Village of any stage or phase of development, the responsibility for the improvements will lie with the Village and not with any subsequent purchaser, be it a developer who purchases the property mid-development or a residential homeowner who purchases a lot or lots from personal use.

¶ 59 Finally, as to the language of the Annexation Agreement, we note that it does, in at least one instance, more expressly distinguish the landowner and its successors who shoulder the development responsibilities from future individual property owners like the homeowners in *Doyle*. That is, in a portion of section 10, the Annexation Agreement provides that the landowner is *not* required to install streetlights. Instead, each lot is to be equipped with a lamppost within 10 feet of the roadway, and occupancy permits will not be issued without said equipment, at which point the "property owner" of the lot is to maintain the lamppost in accordance with the Village ordinance.

¶ 60 Given these provisions, we do not share the *Doyle* court's concern that, under the Village's interpretation, ordinary homeowners will be burdened with the responsibility of municipal improvements. Rather, it is the adoption of KPHC's interpretation that would lead to an absurd result. As KPHC acknowledges, if the landowner had sold every lot but one to a new developer, in this case 81 of 82 lots, the new developer would not be a "successor" and would not be bound

by the terms of the Annexation Agreement. This outcome would certainly undermine the public policy of ensuring that annexation agreements are adhered to so that municipal development may proceed in an orderly and predictable manner. See, *e.g.*, *Orland Park*, 135 Ill. App. 3d at 526. Moreover, given that the Annexation Agreement contemplated the possibility that the subject property might be subdivided and developed in stages, it would make little sense to interpret the agreement as no longer applying where a successor developer takes on the development of a subsequent stage of the development. Indeed, this is an absurdity that would potentially lead to stalled development, as the successor developer and the Village would have to commence new annexation negotiations.

¶ 61 In sum, we recognize that the Annexation Agreement, which runs with the land, neither expressly provides for nor expressly precludes the application of the terms of the Annexation Agreement when a subsequent owner purchases less than the entire property. However, we determine that its terms clearly contemplate the possibility that the subject property would be subdivided and developed in stages and phases, which is entirely consistent with proportionally burdening successor owners with obligations under the Annexation Agreement. Conversely, of course, the Village's obligations under the Annexation Agreement persist *vis-à-vis* such successor owners. And while Annexation Agreement, incorporated by reference in the KPHC I and KPHC II deeds, continues to obligate KPHC for the reasons expressed above, it of course does not follow that individual homeowners are similarly obligated under the Annexation Agreement. Accordingly, we conclude that the original parties to the Annexation Agreement intended to confer successor status on those who purchase a portion of the subject property during the development phase, a result entirely consistent with the public policy favoring adherence to annexation agreements and the orderly progression of development. The Village has properly pleaded that

KPHC is a successor owner of record bound by the terms of the Annexation Agreement and, as such, its complaint should have survived dismissal.

¶ 62 Given our holding, we need not address the Village's alternative argument concerning contractual assignment, nor need we address its claim that KPHC conceded that it was a successor prior to the filing of the operative complaint. Also, because KPHC is no longer the prevailing party, we vacate the trial court's award of attorney fees to KPHC.

¶ 63

III. CONCLUSION

¶ 64 For the reasons stated, we reverse the trial court's section 2-615 dismissal, remand for further proceedings consistent with this opinion, and vacate the award of attorney fees.

¶ 65 Reversed in part and vacated in part; cause remanded.

No. 2-20-0780

Cite as:	*Village of Kirkland v. Kirkland Properties Holdings Co., LLC I*, 2022 IL App (2d) 200780
Decision Under Review:	Appeal from the Circuit Court of De Kalb County, No. 19-L-33; the Hon. Bradley J. Waller, Judge, presiding.
Attorneys for Appellant:	Michael J. Smoron and Jennifer J. Gibson, of Zukowski, Rogers, Flood & McArdle, of Crystal Lake, for appellant.
Attorneys for Appellee:	Colin W. Anderson and Omar F. Uddin, of Anderson & Uddin, P.C., of Aurora, for appellees.

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

May 16, 2022

Omar Fareed Uddin
Anderson & Uddin, P.C.
54 W. Downer Place, #107
Aurora, IL 60506

RE: Village of Kirkland v. Kirkland Properties Holdings Company, LLC I and Kirkland Properties, LLC II
Appeal No.: 2-20-0780, 2-21-0301
County: DeKalb County
Trial Court No.: 19L33

The court today denied the petition for rehearing filed in the above cause. The mandate of this court will issue 35 days from today unless otherwise ordered by this court or a petition for leave to appeal is filed in the Illinois Supreme Court.

If the decision is an opinion, it is hereby released today for publication.

Honorable Donald C. Hudson
Honorable Liam C. Brennan
Honorable Robert D. McLaren

Jeffrey H. Kaplan
Clerk of the Court

cc: Colin William Anderson
Jennifer Jayne Gibson
Michael J. Smoron

IN THE CIRCUIT COURT OF THE 23rd JUDICIAL CIRCUIT
DeKALB COUNTY, ILLINOIS

VILLAGE OF KIRKLAND, a municipal corporation,	)	
Plaintiff,	)	
v.	)	Case No. 2019 L 33
KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC I and KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC II	)	
Defendants.	)	

THIRD AMENDED COMPLAINT

Plaintiff, the Village of Kirkland, an Illinois municipal corporation, by and through its attorneys, Zukowski, Rogers, Flood and McArdle, and for its Third Amended Complaint against the Defendants, Kirkland Properties Holdings Company, LLC I and Kirkland Properties Holdings Company, LLC II, states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. The Village of Kirkland is an Illinois municipal corporation situated in DeKalb County, Illinois (the "Village").

2. On information and belief, Defendants Kirkland Properties Holdings Company, LLC I (or "KPHC I") and Kirkland Properties Holdings Company, LLC II (or "KPHC II") are Illinois limited liability companies that do business in DeKalb County.

3. On information and belief, KPHC I is the present owner of record of 15 of the total 56 lots in "Phase One" of the Hickory Ridge Subdivision (the "Subdivision") within the Village of Kirkland. *See Exhibit A attached hereto, Special Warranty Deed from Plank Road, LLC to Defendant dated January 25, 2017 and recorded as document no. 2017000771 with the DeKalb County Recorder's Office.*

4. On information and belief, KPHC II is the owner of record of 19 of the total 26 lots in "Phase Two" of the Hickory Ridge Subdivision within the Village of Kirkland. *See Exhibit B attached hereto, Special Warranty Deed from Plank Road LLC dated January 25, 2017 and recorded as document no. 2017000772 with the DeKalb County Recorder's Office.*

5. On information and belief, on or about May 5, 2003, the Village entered into a valid annexation agreement which, by its express terms, provides that it is "made pursuant to and in accordance with 65 ILCS 5/11-15.1-1 *et seq.*", including but not limited to Sections 11-15.1-5 and 11-15.1-4 of the Illinois Municipal Code, with David R. Rood, Barbara L. Rood, Robert D. Rood and Ann M. Rood and The National Bank and Trust of Sycamore as Trustee of Trust No. 40-4235000 at such time (defined as the "Landowner" therein), which was recorded with the DeKalb County Recorder's Office as document no. 2003021067, a true and correct copy of which is attached hereto as Exhibit C (the "Annexation Agreement"). On information and belief, the sole owner of record of the "Subject Property" which is the subject of the Annexation Agreement at the time it was entered into was The National Bank and Trust of Sycamore as Trustee of Trust No. 40-4235000 (*see Exhibit D attached hereto, Trustee's Deed from Edward Vander-Molen to The National Bank & Trust Company of Sycamore, as Trustee of Trust No. 40-23500*) and David R. Rood, Barbara L. Rood, Robert D. Rood and Ann M. Rood were the beneficiaries of such trust. *See also Exhibit H, Affidavit of Paul Madsen, Vice President of Operations of Heritage Title Company regarding the chain of title relative to the lots owned by Defendants.*

6. Section 11-15.1-4 of the Illinois Municipal Code, to which the Annexation Agreement references in Section 1, Authority, provides in relevant part as follows:

> ***Any annexation agreement executed pursuant to this Division 15.1, or in conformity with Section 11-15.1-5 [65 ILCS 5/11-15.1-5] hereof, shall be binding upon the successor owners of record of the land which is the subject of the agreement and upon successor municipal authorities of the municipality and successor municipalities.*** *Any party to such agreement may by*

civil action, mandamus, injunction or other proceeding, enforce and compel performance of the agreement. . . .

65 ILCS 5/11-15.1-4 *(emphasis added).*

7. The Landowner, as the owner of record of the Subject Property at the time that the Annexation Agreement was entered into, agreed that the Annexation Agreement was made pursuant to and in accordance with, among other statutory provisions, Section 11-15.1-4, as set forth in Section 1, Authority, of the Annexation Agreement, per the express, specific terms of such document.

8. Under Illinois case law, including *City of Elgin v. Arch Ins. Co.*, 2015 Ill. App. (2d) 150013, para. 21, such statute (65 ILCS 5/11-15.1-4) is incorporated into every contract unless the contract provides to the contrary. Such statute is incorporated into the Annexation Agreement by law.

9. Section 28, Paragraph I of the Annexation Agreement provides in part:

I. Binding on Assigns. All terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, their heirs, executors, administrators, successors and assigns.

This is consistent with Section 11-15.1-4, which the parties to the Annexation Agreement agreed that the Annexation Agreement was made pursuant to, and in accordance with, such statute.

10. The Annexation Agreement contemplated the Subject Property being subdivided into residential lots substantially in accordance with a preliminary subdivision plat attached Exhibit B to the Annexation Agreement. The Annexation Agreement did not contemplate the Subject Property remaining as a single tract owned by one owner of record.

11. After entering into the Annexation Agreement, which expressly provides that it is made pursuant to and in accordance with Section 11-15.1-4 of the Illinois Municipal Code, among other statutory authority, it was the intention of the parties to the Annexation Agreement that its provisions were covenants which run with the land, and to that end, the Annexation Agreement was recorded with the DeKalb County Recorder's Office. Almost every provision of the Annexation Agreement involves, affects and touches the land encompassed by the Annexation Agreement.

12. The deeds by which Defendants took and accepted title from Plank Road, LLC, the successor owner of record to the Landowner relative to the lots set forth in Exhibit I in the Subdivision were expressly subject to the Annexation Agreement. See Exhibits A and B attached hereto. Defendants are the successor owners of record of the lots described in Exhibits A and B, respectively, relative to Plank Road, LLC, the previous owner of record, and the Landowner. The contract by which Defendants acquired and were assigned the lots provides that title to the lots was subject to all "agreements with any municipality regarding the development of the Property" (Section 2.9, Exhibit E hereto).

13. Pursuant to the Annexation Agreement, the Village annexed the Subject Property (See Exhibit F hereto) to the Village, rezoned the Subject Property to allow for single family residential homes (See Exhibit G hereto) and approved two plats of subdivision, recorded as document numbers 2004006047 and 2007000300, respectively, with the DeKalb County Recorder's Office.

14. On information and belief, the beneficiaries of the above-referenced trust directed the Landowner, on November 30, 2011, to assign its rights to ownership of the lots subject to the Annexation Agreement to Plank Road, LLC on November 30, 2011 as set forth in deed no. 2011013159. *See Trustee's Deed from The National Bank & Trust Company, as Trustee of Trust No. 40-423500 to Plank Road, LLC attached hereto as Exhibit I.* Plank Road, LLC was the successor to, as well as the assign of, the Landowner and the previous beneficial owners of such lots insofar as Plank Road, LLC was granted and assigned title to the lots presently owned by the Defendants, along with the rights and obligations of the Annexation Agreement recorded against and encompassing such lots.

15. The lots in the Subdivision, as a result of the Annexation Agreement, were zoned in such a manner to allow for the construction of single-family homes on such lots, have access to

water mains, access to Village treatment plant services, and the Village provides potable water for the Subdivision.

16. Prior to its annexation to the Village, the Subject Property was in unincorporated DeKalb County which, on information and belief, does not provide potable water treatment services.

17. Section 23 of the Annexation Agreement provides in part as follows:

> Section 23. Enforceability of the Agreement.
>
> This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties by an appropriate action at law or in equity to secure the performance of the provisions and covenants herein described.

18. The lots in the Subdivision owned by the Defendants are subject to the terms and conditions of the Annexation Agreement and the Defendants are successors and assigns to the above-described lots as such terms are used and defined in paragraph 28.I of the Annexation Agreement and as reflected by the deeds attached hereto as Exhibits A and B. On information and belief, Defendants fully understood that the lots they were acquiring were subject to the covenants in the Annexation Agreement and that they ran with the Subject Property as set forth in a title insurance commitment that Defendants received prior to purchasing such lots and as reflected by the deeds by which Defendants lots were assigned to them.

19. Black's Law Dictionary (Revised Fourth Edition) defines "assign" as to, *inter alia*, "set over to another" such as "to transfer; or to assign property, or some interest therein." An assign is a grantee of the subject premises, that is, someone to whom a property interest has been conveyed. *Sanni, Inc. v. Fiocchi*, 111 Ill.App.3d 234, 443 N.E.2d 1108 (2nd Dist. 1983).

20. It has long been established that assignees are "those to whom rights have been transmitted by particular title, such as sale, gift, legacy or transfer." *Ball v. Chadwick*, 46 Ill. 28 (1867). The Supreme Court in such decision adopted such definition when it analyzed the term

"assigns" under the then forcible detainer statute. And in *People ex rel. Pearce v. Commercial Tel. & Tel. Co.*, 277 Ill. 265, 115 N.E. 379, 382 (1917) explained:

> Legislative authority to such a corporation to assign or transfer its property, and such a license as here in question, is implied when the grant is to it and its successors and assigns.

21. While the Annexation Agreement does not use the term "assignment", Illinois law provides that an assignment is a transfer of some identifiable property, claim or right from assignor to assignee. In the case of *In re LeRoy*, 251 B.R. 490, 507 (2000), the court explained that an assignment operates to transfer to the assignee all of the assignor's right, title or interest in the matter assigned. *Id.* Generally, no particular form of assignment is required. *Id.*

22. Black's Law Dictionary defines "successor" as one who "succeeds or follows; one who takes the place that another has left, and sustains the like part or character; one who takes the place of another by succession." Black's Law Dictionary 1431 (6th ed. 1990).

23. The parties intended, and the Annexation Agreement contemplated, that there would be more than one owner of record of the Subject Property, and more than one successor and assign, insofar as the Annexation Agreement provided for the subdivision of the Subject Property into lots.

24. Defendants are the successors of the parties to the Annexation Agreement relative to the land constituting the lots now owned by the Defendants.

25. Defendants are assigns of the parties to the Annexation Agreement relative to the land constituting the lots now owned by the Defendants within the meaning of Section 28, paragraph I of the Annexation Agreement insofar as they have, with respect to the real property described in the Annexation Agreement, "some interest" therein which has been set over, granted or transferred to Defendants.

26. The purchase and sale agreement between Plank Road, LLC, as seller, and James Gentile, the principal of the Defendants, as buyer, provides that the lots are to be conveyed to Mr. Gentile "or his assignee" (first paragraph of the contract), that the seller is to "assign" its interest in

the lots (Section 2.1 of the contract) to the buyer and Section 8.11 of the purchase and sale agreement reads in relevant part as follows:

> **8.11. Successors and Assigns.** This Agreement is binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
>
> See Exhibit E hereto.

27. Defendants *themselves* have asserted that they are the successors to the developer/Landowner of the "Subject Property":

> The Defendants, along with dozens of other lot owners (who are without explanation not named as defendants in Plaintiff's Complaint), **are the successors in interest to the Developers.** (See Annexation Agreement, §281). **As the successors in interest, any prior performance by their predecessor inures to the Defendants** and other lot owners benefit. (Id.) *(emphasis added).*
>
> *Defendants' Motion to Dismissed filed October 7, 2019, page 3.*

28. Plank Road, LLC was a successor and assign of The National Bank and Trust of Sycamore as Trustee of Trust No. 40-4235000 relative to the lots that it acquired by deed and the Defendants are successors and assigns of the lots they received by deed from Plank Road, LLC to which lots were granted and assigned from the Landowner per the relevant deed.

29. Section 11-15.1-4 clearly and unambiguously binds successor owners of property subject to an annexation agreement. As recognized by the Second District Appellate Court in *United City of Yorkville v. Fid. & Deposit Co. of Maryland*, 2019 IL App (2d) 180230, ¶ 75, 143 N.E.3d 69, 83, *reh'g denied (Apr. 12, 2019), appeal denied,* 132 N.E.3d 308 (Ill. 2019), and *appeal denied,* 132 N.E.3d 336 (Ill. 2019):

> "There is hardly more pertinent authority than section 11-15.1-4 of the Municipal Code (65 ILCS 5/11-15.1-4 (West 2002)), cited by the City, which provides that an annexation agreement binds successor owners and, therefore, ***creates privity of contract for nonsignatories.***" *(emphasis added)*
>
> As a result, there is privity of contract, i.e., the Annexation Agreement, between the Village and the Defendants, despite the Defendants not being signatories to the Annexation Agreement. In

addition, the parties to the Annexation Agreement intended its provisions to run with the land as covenants at the time the Annexation Agreement was entered into insofar as the provisions of the Annexation Agreement touch and concern the Subject Property.

30. For decades, Illinois courts have held that annexation agreements are binding upon successor owners of the land. *See e.g. Vill. of Orland Park v. First Fed. Sav. & Loan Ass'n of Chicago*, 135 Ill. App. 3d 520, 526 (1st Dist. 1985); *City of Elgin v. Arch Ins. Co.*, 2015 IL App (2d) 150013, ¶ 2.

31. The provisions of the Annexation Agreement constitute a set of covenants insofar as it is an agreement between parties to do or not to do a particular act. *Leverich v. Rox*, 402 Ill. 71, 73, 83 N.E.2d 335, 336 (1949).

32. Section 10 of the Annexation Agreement provides in part as follows:

> Section 10. Roadways.
> The Landowner shall construct all roadways required to be developed on the Subject Property. Said construction shall be completed in accordance with the Village's standards and ordinances, except that
>
> (A) All roads constructed shall have a 66 foot right-of-way and a 24 foot paved surface centered over a 26 foot wide, 12" deep gravel bedrock surface, with ditches having a minimum depth of 18" on both sides, which shall drain to one of the areas described in Section 11. All roads shall be paved in two 1 ½" lifts. Prior to the occupancy of any building, the gravel base shall be constructed to the approved thickness. Once 50% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the first layer of the bituminous surface has been installed throughout that phase. Once 80% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the final layer of the bituminous surface has been installed throughout that phase. The Landowner shall maintain the stone base and shall seal coat the same to control dust if required by Village prior to the installation of the bituminous surface. Landowner shall be responsible for maintenance and snow removal on all roads in the subdivision until said roads are accepted by the Village. Upon the proper completion of the street construction, the Village shall promptly accept such improvements and thereafter maintain such improvements;

33. Section 14 of the Annexation Agreement provides in part as follows:

> Section 14. Irrevocable Letter of Credit.
> In lieu of a construction bond or development bond or bonds, the Village will require an irrevocable letter of credit from a financial institution to guarantee construction and

quality of all public facilities to be constructed in any stage or unit of development for which approval is sought. Said letter of credit shall be in the amount of one hundred percent (100%) of the contract costs of construction of all of the public facilities in the unit or stage or one hundred twenty five percent (125%) of Landowner engineer's contract estimate for the unit or stage as approved by the Village Engineer; and said letter of credit shall be payable to the Village.

As the Landowner completes items within each letter of credit, subject to approval by the Village Engineer, the letter of credit shall be abated accordingly. Landowner agrees to cause the letter of credit to be extended to cover the actual time of construction.

34. The purchase and sale agreement by which Defendants acquired the lots was premised upon security being posted to complete the roads in the subdivision insofar as it provides: "... where such street or highway is not complete, a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing such street or highway has been posted to assure completion to such standards ... (Section 9.1.4(b), Exhibit E hereto).

35. The Appellate Court for the Second District maintains the following:

Not uncommonly, a unitary tract of land governed by annexation agreement is later divided and sold to different developers, as happened in this case. The public policy in favor of ensuring the fulfillment of an annexation agreement (see *Village of Orland Park v. First Federal Savings & Loan Ass'n of Chicago*, 135 Ill.App.3d 520, 526, 90 Ill.Dec. 146, 481 N.E.2d 946 (1985)) would be frustrated if the succession of duties under section 11-15.1-4 continued only as long as the land remained under common ownership.

United City of Yorkville v. Fidelity and Deposition Company of Maryland, 2019 IL App (2d) 180230, ¶ 75, 143 N.E.3d 69, 83, *reh'g denied (Apr. 12, 2019), appeal denied,* 132 N.E.3d 308 (Ill. 2019), and *appeal denied*, 132 N.E.3d 336 (Ill. 2019).

36. The purchase and sale agreement by which the Defendants, on information and belief, acquired title to the lots provides in part as follows:

9.1.1 <u>Builder Provision</u>. Buyer hereby represents and warrants that it acquires such lots for the purpose of engaging in the business of constructing residential, commercial or industrial buildings, or for the purpose of resale or lease of such lots to persons engaged in such business, and that the Property is being acquired for the purpose of redevelopment for a storage center.

See Exhibit E attached hereto.

37. Defendants are obligated to deposit such letter of credit with the Village in at least the proportionate amount of their lots in the phases of the Subdivision and/or the amount of road

frontage of such lots in order to secure the repair, completion and/or replacement of the roads in the Subdivision.

38. On information and belief, the Defendants have not maintained the roads in the Subdivision or contributed toward same.

39. The Village has not accepted the roads in the Subdivision insofar as they are not completed.

40. Demand has been made for such letter of credit to Defendants (see Exhibit J attached hereto). Defendants have not deposited such letter of credit and are in material breach of the Annexation Agreement.

41. On information and belief, the Village is in compliance with the Annexation Agreement and performed all of its obligations and duties under the Annexation Agreement, including but not limited to rezoning the Subject Property, approving plats of subdivision allowing for the Subject Property to be subdivided, allowing water mains to be installed throughout the Subdivision to allow all lots, including but not limited to those owned by Defendants, to be able to be served by the Village potable water services and, on information and belief, enhancing the value of all such lots in the Subdivision.

42. By virtue of such breach by each Defendant, the Village has experienced damage in the amount of at least $50,000 by virtue of the Defendants' failure to deposit such letters of credit.

COUNT I – BREACH OF THE ANNEXATION AGREEMENT
(Kirkland Properties Holdings Company, LLC I)

43. The Village incorporates and re-alleges paragraphs 1 through 42 above as if fully set forth herein.

WHEREFORE, the Village requests that the Court find Kirkland Properties Holdings Company, LLC I in breach of the Annexation Agreement, that the Village has experienced damages

in excess of $50,000, and that the Village be awarded its attorney's fees and costs in accordance with the Annexation Agreement and for such other relief that the Court deems appropriate.

COUNT II – BREACH OF THE ANNEXATION AGREEMENT
(Kirkland Properties Holdings Company, LLC II)

44. The Village incorporates and re-alleges paragraphs 1 through 42 above as if fully set forth herein.

WHEREFORE, the Village requests that the Court find Kirkland Properties Holdings Company, LLC II in breach of the Annexation Agreement, that the Village has experienced damages in excess of $50,000, and that the Village be awarded its attorney's fees and costs in accordance with the Annexation Agreement and for such other relief that the Court deems appropriate.

COUNT III – SPECIFIC PERFORMANCE OF THE ANNEXATION AGREEMENT
(Kirkland Properties Holdings Company, LLC I)

In the alternative, the Village pleads the following:

45. The Village incorporates and re-alleges paragraphs 1 through 42 above as if fully set forth herein.

WHEREFORE, the Village requests that this Court order Kirkland Properties Holdings Company, LLC I to specifically perform Section 14, Irrevocable Letter of Credit, of the Annexation Agreement and deliver a letter of credit in a proportionate amount to repair, construct and/or replace the roads in Phase One of the Hickory Ridge subdivision and for such other equitable or other relief that the Court deems appropriate.

COUNT IV – SPECIFIC PERFORMANCE OF THE ANNEXATION AGREEMENT
(Kirkland Properties Holdings Company, LLC II)

In the alternative, the Village pleads the following:

46. The Village incorporates and re-alleges paragraphs 1 through 28 above as if fully set forth herein.

WHEREFORE, the Village requests that this Court order Kirkland Properties Holdings Company, LLC II to specifically perform Section 14, Irrevocable Letter of Credit, of the Annexation Agreement and deliver a letter of credit in a proportionate amount to repair, construct and/or replace the roads in Phase Two of the Hickory Ridge subdivision and for such other relief that the Court deems appropriate.

Village of Kirkland, an Illinois municipal corporation
By: ZUKOWSKI, ROGERS, FLOOD & MCARDLE

By Michael J Smoron
Michael J. Smoron

Michael J. Smoron, Atty. #06207701
Attorney for Village of Kirkland
Zukowski, Rogers, Flood & McArdle
50 Virginia Street
Crystal Lake, IL 60014
(815) 459-2050; msmoron@zrfmlaw.com

Exhibits

Exhibit A:	Special Warranty Deed from Plank Road, LLC to Defendant Kirkland Properties Holdings Company, LLC I dated January 25, 2017 and recorded as document no. 2017000771 with the DeKalb County Recorder's Office
Exhibit B:	Special Warranty Deed from Plank Road, LLC to Defendant Kirkland Properties Holdings Company, LLC II dated January 25, 2017 and recorded as document no. 2017000772 with the DeKalb County Recorder's Office
Exhibit C:	Annexation Agreement
Exhibit D:	Trustee's Deed from Edward Vander-Molen to The National Bank & Trust Company of Sycamore, as Trustee of Trust No. 40-23500 recorded as document no. 2002002739 and re-recorded as document no. 2004002818
Exhibit E:	Real Estate Owned Purchase and Sale Agreement (to be filed under seal)
Exhibit F:	Village of Kirkland Ordinance Annexing the Subject Property
Exhibit G:	Village of Kirkland Ordinance Zoning the Subject Property
Exhibit H:	Affidavit of Paul Madsen, Vice President of Operations at Heritage Title Company regarding the chain of title relative to the lots owned by Defendants
Exhibit I:	Trustee's Deed from The National Bank & Trust Company, as Trustee of Trust No. 40-23500 to Plank Road, LLC recorded as document no. 2011013159
Exhibit J	Demand Letters from the Village to the Defendants

EXHIBIT A

SPECIAL WARRANTY DEED

16-00453/NFOK 1/32

Return to After Recording:
Colin W. Anderson
Anderson & Uddin, P.C.
54 W. Downer Place, Suite 103
Aurora, Illinois 60506

Taxes to Grantee's Address:
Kirkland Properties Holdings Company, LLC I
c/o James Gentile
3243 Keller Lane
Naperville, Illinois 60565

2017000771

DOUGLAS J. JOHNSON
RECORDER - DEKALB COUNTY, IL
RECORDED: 1/31/2017 09:29 AM
REC FEE: 57.00 RHSPS FEE: 9.00
STATE TAX: 32.50
COUNTY TAX: 16.25
PAGES: 5

STATE OF ILLINOIS
STATE TAX
JAN.31.17
DeKALB COUNTY
0000009295

REAL ESTATE TRANSFER TAX
0003250
FP326654

* The Above Space for Recorder's Use Only *

THIS SPECIAL WARRANTY DEED is made as of January 27, 2017, by **Plank Road, LLC**, an Illinois Limited Liability Company, having an address at One Pierce Place, Suite 1500, Itasca, IL 60143 ("Grantor") in favor of **Kirkland Properties Holdings Company, LLC I**, an Illinois Series Limited Liability Company having an office at the following address: 3243 Keller Lane, Naperville, IL 60565 ("Grantee"). The Grantor, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration in hand paid, the receipt, adequacy and sufficiency of which is hereby acknowledged, by these presents does **REMISE, RELEASE, GRANT, ALIENATE, AND CONVEY** unto Grantee the following described real property located in the County of DeKalb, State of Illinois and legally described on the attached Exhibit "A."

Permanent Index Numbers: 01-27-129-007; 01-27-129-008; 01-27-177-001; 01-27-177-002; 01-27-177-003; 01-27-177-004; 01-27-177-005; 01-27-177-006; 01-27-177-007; 01-27-127-009; 01-27-177-008; 01-27-177-009; 01-27-177-010; 01-27-177-014; and 01-27-201-001.

Common Address: Lots 49, 50, 56, 57, 58, 59, 60, 61, 62, 71, 72, 73, 74, 78 and 108 in Hickory Ridge Subdivision Phase One, Kirkland, Illinois 60146.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, all the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, of Grantor, either in law or equity, of, in and to the above described property, with the hereditaments and appurtenances: **TO HAVE AND TO HOLD** said property, with the appurtenances, unto Grantee, its successors and assigns forever.

And Grantor, for itself, and its successors, does covenant, promise and agree, to and with Grantee, its successors and assigns, that it has not done or suffered to be done, anything whereby the property described on Exhibit "A" is, or may be, in any manner encumbered or charged, and will warrant and defend said property against all persons lawfully claiming, or to claim the same, by through and under Grantor, but not otherwise, subject to: the Permitted Title Exceptions, as described on Exhibit "B" attached hereto and hereby made a part hereof.

IN WITNESS WHEREOF, Grantor has executed this deed the day and year first above-written.

PLANK ROAD, LLC,
an Illinois Limited Liability Company

By: Mary Brown
Name: Mary Brown
Title: Vice President

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY, that **Mary Brown**, Vice President of Plank Road, LLC, an Illinois Limited Liability Company, on behalf of the limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 25th day of January, 2017.

Rebecca L. Poston (SEAL)
Notary Public

OFFICIAL SEAL
REBECCA L POSTON
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/15/20

This Instrument Prepared By:
Foster, Buick, Conklin, Lundgren & Tritt, LLC
Attorneys at Law
2040 Aberdeen Court
Sycamore, Illinois 60178

EXHIBIT "A"

LOTS 49, 50, 56, 57, 58, 59, 60, 61, 62, 71, 72, 73, 74, 78 AND 108 IN HICKORY RIDGE PHASE ONE, A SUBDIVISION OF PART OF THE SOUTHWEST ¼ OF SECTION 22, AND PART OF THE NORTH ½ OF SECTION 27, ALL IN TOWNSHIP 42 NORTH, RANGE 3, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF KIRKLAND, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 2, 2004 IN PLAT CABINET 9, SLIDE 101-D, AS DOCUMENT 2004006047 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 6, 2004 AS DOCUMENT 2004024808, IN DEKALB COUNTY, ILLINOIS.

EXHIBIT "B"

1. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land.

2. Easements, or claims of easements, not shown by the Public Records.

3. Taxes or special assessments which are not shown as existing liens by the Public Records.

4. Taxes for the years 2016 and 2017.
Taxes for the years 2016 and 2017 are not yet due or payable.

Due to the $150.00 exclusion law, 35 ILCS 200/18-40, there is no amount due for the 2015 tax year for the following tax parcel numbers:

01-27-129-007 (Affects Lot 49)
01-27-129-008 (Affects Lot 50)
01-27-177-001 (Affects Lot 56)
01-27-177-002 (Affects Lot 57)
01-27-177-003 (Affects Lot 58)
01-27-177-004 (Affects Lot 59)
01-27-177-005 (Affects Lot 60)
01-27-177-006 (Affects Lot 61)
01-27-177-007 (Affects Lot 62)
01-27-127-009 (Affects Lot 71)
01-27-177-008 (Affects Lot 72)
01-27-177-009 (Affects Lot 73)
01-27-177-010 (Affects Lot 74)
01-27-177-014 (Affects Lot 78)
01-27-201-001 (Affects Lot 108)

5. Existing unrecorded leases and all rights thereunder of the lessees and of any person or party claiming by, through or under the lessees.

6. Covenants and restrictions (but omitting any such covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said Covenant (A) is exempt under Chapter 42, Section 3607 of the United States Code or (B) relates to handicap but does not discriminate against handicapped persons), contained on the Plat of Hickory Ridge Phase One recorded April 2, 2004 as Document No. 2004006047 which does not contain a reversionary or forfeiture clause.

7. Terms and provisions and fees as contained in the following documents executed by the Village of Kirkland, as follows:

(A) annexation agreement recorded as Document No. 2003021067.

(B) Ordinance 03-07 annexing the Land recorded as Document No. 2003017448 and re-recorded as Document No. 2003021068.

8. Typical lot detail (unless shown otherwise on the Hickory Ridge Phase One recorded April 2, 2004 as document 2004006047 as contained in the certificate appended to the Plat of Subdivision as follows:

(a) 40-foot building line on Lot line(s) that front on a street (except those Lot lines fronting on Illinois Route 72).
(b) 10-foot utility easement on all Lot lines.

9. Utility easements that differ from typical as shown on the Hickory Ridge Phase One recorded April 2, 2004 as document 2004006047, as follows: 5.00 feet on the South line of Lot 108.

10. 5-foot wide walk way easement as shown on the Hickory Ridge Phase One recorded April 2, 2004 as document 2004006047, as follows:

On the North Line of Lot 61.
On the South Line of Lot 62.
On the South Line of Lot 72.
On the North Line of Lot 73.

Note appended to the Plat states that the easement must be kept free from fences, shrubs, gardens, and anything that may be dangerous to pedestrians. Adjacent Lot owners must maintain and keep in good repair.
(Affects Lots 61, 62, 72, and 73)

11. Note appended to the Surveyor's Certificate as contained on Hickory Ridge Phase One recorded April 2, 2004 as document 2004006047, as follows:

The above described tract is not located within the area designated as flood hazard, as identified by the F.E.M.A.

12. Utility easements in favor of Commonwealth Edison Company, Verizon North, Nicor Gas, and the Village of Kirkland, DeKalb County, Illinois, and its/their respective successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the Land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the Hickory Ridge Phase One recorded April 2, 2004 as document 2004006047.

13. Drainage easements in favor of the Village of Kirkland, and its successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the Hickory Ridge Phase One recorded April 2, 2004 as document 2004006047.

14. Annexation Agreement recorded July 23, 2003 as document 2003021067.

15. Ordinance 03-07 recorded June 23, 2003 as document 2003017448 from the Village of Kirkland re-recorded as Document 2003021068.

EXHIBIT B

SPECIAL WARRANTY DEED

16004551WFDk 2of2

Return to After Recording:
Colin W. Anderson
Anderson & Uddin, P.C.
54 W. Downer Place, Suite 103
Aurora, Illinois 60506

Taxes to Grantee's Address:
Kirkland Properties Holdings Company, LLC II
c/o James Gentile
3243 Keller Lane
Naperville, Illinois 60565

2017000772

DOUGLAS J. JOHNSON
RECORDER - DEKALB COUNTY, IL
RECORDED: 1/31/2017 09:29 AM
REC FEE: 58.00 RHSPS FEE: 9.00
STATE TAX: 32.50
COUNTY TAX: 16.25
PAGES: 6

STATE OF ILLINOIS
STATE TAX
JAN. 31. 17
DeKALB COUNTY
0000089296

REAL ESTATE TRANSFER TAX
0003250
FP326654

The Above Space for Recorder's Use Only

THIS SPECIAL WARRANTY DEED is made as of January 30, 2017, by **Plank Road, LLC**, an Illinois Limited Liability Company, having an address at One Pierce Place, Suite 1500, Itasca, IL 60143 ("Grantor") in favor of **Kirkland Properties Holdings Company, LLC II**, an Illinois Series Limited Liability Company having an office at the following address: 3243 Keller Lane, Naperville, IL 60565 ("Grantee"). The Grantor, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration in hand paid, the receipt, adequacy and sufficiency of which is hereby acknowledged, by these presents does **REMISE, RELEASE, GRANT, ALIENATE, AND CONVEY** unto Grantee the following described real property located in the County of DeKalb, State of Illinois and legally described on the attached Exhibit "A".

Permanent Index Numbers: 01-22-372-001; 01-22-372-004; 01-22-373-005; 01-22-373-006; 01-22-373-007; 01-22-375-004; 01-22-375-005; 01-22-375-006; 01-22-375-007; 01-22-373-001; 01-22-372-002; 01-22-372-003; 01-22-373-009; 01-22-373-010; 01-22-374-001; 01-22-374-002; 01-22-374-003; 01-22-374-004; and 01-22-374-005.

Common Address: Lots 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37 and 38 in Hickory Ridge Subdivision Phase Two, Kirkland, Illinois 60146.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, all the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, of Grantor, either in law or equity, of, in and to the above described property, with the hereditaments and appurtenances: **TO HAVE AND TO HOLD** said property, with the appurtenances, unto Grantee, its successors and assigns forever.

And Grantor, for itself, and its successors, does covenant, promise and agree, to and with Grantee, its successors and assigns, that it has not done or suffered to be done, anything whereby the property described on Exhibit "A" is, or may be, in any manner encumbered or charged, and will warrant and defend said property against all persons lawfully claiming, or to claim the same, by through and under Grantor, but not otherwise, subject to: the Permitted Title Exceptions, as described on Exhibit "B" attached hereto and hereby made a part hereof.

IN WITNESS WHEREOF, Grantor has executed this deed the day and year first above-written.

PLANK ROAD, LLC,
an Illinois Limited Liability Company

By: Mary Brown
Name: Mary Brown
Title: Vice President

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY, that **Mary Brown**, Vice President of Plank Road, LLC, an Illinois Limited Liability Company, on behalf of the limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 25th day of January, 2017.

Rebecca L. Poston (SEAL)
Notary Public

OFFICIAL SEAL
REBECCA L POSTON
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/15/20

This Instrument Prepared By:
Foster, Bulck, Conklin, Lundgren & Tritt, LLC
Attorneys at Law
2040 Aberdeen Court
Sycamore, Illinois 60178

EXHIBIT "A"

LOTS 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37 AND 38 IN HICKORY RIDGE PHASE TWO, A SUBDIVISION OF PART OF THE SOUTHWEST ¼ OF SECTION 22, TOWNSHIP 42 NORTH, RANGE 3, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 5, 2007 AS DOCUMENT 2007000300, IN THE VILLAGE OF KIRKLAND, DEKALB COUNTY, ILLINOIS.

EXHIBIT "B"

1. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land.

2. Easements, or claims of easements, not shown by the Public Records.

3. Taxes or special assessments which are not shown as existing liens by the Public Records.

5. Taxes for the years 2016 and 2017.
Taxes for the years 2016 and 2017 are not yet due or payable.

Note: Taxes for the year 2015 amounting to $482.98 are paid of record.

Permanent Index Number: 01-22-372-001-0000 (Affects Lot 25)

6. Taxes for the years 2016 and 2017.
Taxes for the years 2016 and 2017 are not yet due or payable.

Note: Taxes for the year 2015 amounting to $482.98 are paid of record.

Permanent Index Number: 01-22-372-004-0000 (Affects Lot 28)

7. Taxes for the years 2016 and 2017.
Taxes for the years 2016 and 2017 are not yet due or payable.

Note: Taxes for the year 2015 amounting to $482.98 are paid of record.

Permanent Index Number: 01-22-373-005-0000 (Affects Lot 24)

8. Taxes for the years 2016 and 2017.
Taxes for the years 2016 and 2017 are not yet due or payable.

Note: Taxes for the year 2015 amounting to $482.98 are paid of record.

Permanent Index Number: 01-22-373-006-0000 (Affects Lot 29)

9. Taxes for the years 2016 and 2017.
Taxes for the years 2016 and 2017 are not yet due or payable.

Note: Taxes for the year 2015 amounting to $482.98 are paid of record.

Permanent Index Number: 01-22-373-007-0000 (Affects Lot 30)

10. Taxes for the years 2016 and 2017.
Taxes for the years 2016 and 2017 are not yet due or payable.

Due to the $150.00 exclusion law, 35 ILCS 200/18-40, there is no amount due for the 2015 tax year for the following tax parcel numbers:

01-22-375-004 (Affects Lot 16)
01-22-375-005 (Affects Lot 17)
01-22-375-006 (Affects Lot 18)
01-22-375-007 (Affects Lot 19)
01-22-373-001 (Affects Lot 20)
01-22-372-002 (Affects Lot 26)
01-22-372-003 (Affects Lot 27)
01-22-373-009 (Affects Lot 32)
01-22-373-010 (Affects Lot 33)
01-22-374-001 (Affects Lot 34)
01-22-374-002 (Affects Lot 35)
01-22-374-003 (Affects Lot 36)
01-22-374-004 (Affects Lot 37)
01-22-374-005 (Affects Lot 38)

11. Existing unrecorded leases and all rights thereunder of the lessees and of any person or party claiming by, through or under the lessees.

12. Annexation Agreement recorded July 23, 2003 as document 2003021067.

13. Ordinance 03-07 recorded June 23, 2003 as document 2003017448 from the Village of Kirkland re-recorded as Document 2003021068.

14. 40-foot building line(s) as shown on the Hickory Ridge Phase Two recorded January 5, 2007 as document 2007000300. (For further particulars, see Plat.)

15. 10-foot utility easement as shown on the Hickory Ridge Phase Two recorded January 5, 2007 as document 2007000300. (For further particulars, see Plat.)

16. 20-foot utility easement and drainage easement as shown on the Hickory Ridge Phase Two recorded January 5, 2007 as document 2007000300. (For further particulars, see Plat.)

17. 20-foot wide watermain easement as shown on the Hickory Ridge Phase Two recorded January 5, 2007 as document 2007000300. (For further particulars, see Plat.)

18. Drainage easement in favor of the Village of Kirkland, and its successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the Land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the Hickory Ridge Phase Two recorded January 5, 2007 as document 2007000300.

19. Rights of way for railroad spurtracks, switches and sidings, if any, along the northern lines of Lots 23, 24, 29, 30, 31, 36, and 37.

20. Note on the Hickory Ridge Phase Two recorded January 5, 2007 as document 2007000300:
A part of Lots 23 and 24 are within the area designated as flood hazard area.

21. Covenants and restrictions (but omitting any such covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons) contained in Hickory Ridge Phase Two recorded January 5, 2007 as document 2007000300, relating to single family residence, area, use, quality, temporary structures, construction, maintenance of Lots, easements, sanitary disposal, water, approval of plans, materials, towers, solar units, no noxious or offensive activity, garbage, no signs, sightlines at intersections and no fence which does not contain a reversionary or forfeiture clause.

22. Easement for the purpose of installing, operate, lay, construct, operate, maintain, repair, renew and replace water mains, and sanitary sewer lines, storm sewer lines, street and light cable, overhead and underground transmission, as granting to the Commonwealth Edison Company, Verizon North, Nicor Gas and Village of Kirkland, its successors and assigns, as stated in the Hickory Ridge Phase Two recorded January 5, 2007 as document 2007000300.

23. Rights of adjoining owners to the uninterrupted flow of any stream which may cross the premises.

EXHIBIT C

2003021067

37 -
23pgs

FILED FOR RECORD
DEKALB COUNTY, IL.
03 JUL 23 PM 3:21
Sharon K. Holman
DEKALB COUNTY RECORDER

2003021067

Annexation Agreement between the Village of Kirkland and David R. Rood, Barbara L. Rood, Robert D. Rood and Ann M. Rood.

Document prepared by: Richard Schmack
584 West State Street
Sycamore, IL 60178

Return to: Village of Kirkland
511 W. Main St.
Kirkland, IL 60146

VILLAGE OF KIRKLAND

ANNEXATION AGREEMENT

This Agreement, made this 5th day of May, 2003, by and between the Village of Kirkland, a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois, (hereinafter referred to as "Village") by and through its Village President and Village Board of Trustees (hereinafter referred to collectively as "Corporate Authorities") and the owners of certain territory contiguous to the corporate limits of the Village. The beneficial owners of said territory are David R. Rood, Barbara L. Rood, Robert D. Rood, and Ann M. Rood, collectively doing business as Rood Development, and the legal owner is the National Bank and Trust Company of Sycamore, Illinois as Trustee of Trust Number 40-423500 (hereinafter referred to collectively as "Landowner").

WHEREAS, Landowner is the owner of record of a certain parcel of Real Estate, hereinafter referred to as the "Subject Property", the legal description of which is attached hereto as Exhibit "A", and

WHEREAS, the Real Estate described in Exhibit "A" consists of 114.27 acres, more or less, located immediately north of Illinois Route 72, west of the corporate limits of the Village of Kirkland, in unincorporated Franklin Township, and

WHEREAS, said Real Estate is presently contiguous to the corporate limit of the Village, and may be annexed to the Village under 65 ILCS 5/7-1-1 et. seq., and

WHEREAS, Landowner desires to annex said Real Estate to the Village of Kirkland, and to develop thereon a residential subdivision substantially in accordance with a Preliminary Subdivision Plat which has been provided to the Village, a copy of which is attached hereto as Exhibit "B", and

WHEREAS, the Corporate Authorities, after due and careful consideration, have concluded that the annexation of said parcel to the Village under the terms and conditions hereinafter set forth would further the orderly growth and quality of life of the Village, and enable the Village to control the development of the area, and to serve the best interests of the Village, and

WHEREAS, Landowner desires to annex said parcel to the Village under the terms and conditions hereinafter set forth, and has filed a petition, with a Plat of Annexation attached, therefore, and

WHEREAS, 65 ILCS 5/11-15.1-1 et. seq. provides for Annexation Agreements between the Corporate Authorities and Landowner of parcels presently contiguous to the corporate limits, and

WHEREAS, Landowner and Village are aware of the existence and possible import of the decision of the Illinois Appellate Court in Thompson v Newark 2-01-0542 (Ill App 3d 2002), and Landowner, in consideration of Village's agreements and undertakings herein are willing to pay certain fees and exactions, and to waive, for themselves, their heirs, successors, and assigns any and all claim that said fees and exactions were enacted in the exercise of a power beyond the scope of the powers of the village as a non-home rule municipality under 65 ILCS 5/11-12-5.

The Landowner further stipulate that any limitations arguably imposed upon the imposition of impact fees under 65 ILCS 5/11-12-5 apply only to land already within the Village limits and do not operate as a restriction upon the ability of willing parties to enter into an enforceable agreement under 65 ILCS6 5/11-15.1-1 et. seq.

WHEREAS, the Plan Commission of the Village, being the commission duly designated by the Corporate Authorities of the Village to hold a public hearing on the proposed Preliminary Plat of Subdivision and Zoning Amendments, has heretofore held a public hearing on the application of the owner for rezoning pursuant to the provisions of the Zoning Ordinance of the Village of Kirkland and the Illinois Revised Statutes, as amended; and due notice of said public hearing was held in all respects in a manner conforming to law; and

WHEREAS, the Plan Commission of the Village, being the commission duly designated by the Corporate Authorities of the Village to review preliminary plats has heretofore reviewed and approved said Preliminary Plat of Subdivision, and

WHEREAS, the Plan Commission of the Village has made its report and recommendations to the Corporate Authorities of the Village, all in accordance with the ordinances of the Village and the statutes of the State of Illinois; and

WHEREAS, any fire protection district, library district, Board of Trustees, Commissioner of Highways and other entity or person entitled to notice prior to annexation of the Subject Property to the Village has been given notice thereof by Village as required by law; and

WHEREAS, the Corporate Authorities of the Village, on April 21, 2003, held a public hearing on this Agreement, and due notice of said public hearing was published in the manner required by law, and said public hearing was held in all respects in a manner conforming to law; and

WHEREAS, all other matters, in addition to those specifically referred to above which are included in this Agreement, have been considered by the parties hereto, and the development of the Subject Property for the use as permitted under the Zoning Ordinance of the Village and in accordance with the terms and conditions of this Agreement, will inure to the benefit and improvements of the Village and its residents, and will promote the sound planning and development of the Village and will otherwise enhance and promote the general welfare of the people of the Village; and

WHEREAS, in reliance upon the execution of this Agreement by the Village and the performance by the Village of the undertakings hereinafter set forth to be performed by it, there has been submitted the aforesaid Petition for Annexation, and the Village and the Landowner are willing to undertake certain obligations as hereinafter set forth, and have or will have materially changed their positions in reliance upon the said Agreement and the undertakings contained therein; and

WHEREAS, it is the desire of the parties hereto that the development of the Subject Property proceed as conveniently as may be and be subject to the terms and conditions hereinafter contained.

NOW THEREFORE, the Village of Kirkland, by its Corporate Authorities, and the Landowner in consideration of the mutual promises set forth herein do agree as follows:

Section 1. Authority.

This Annexation Agreement is made pursuant to and in accordance with the provisions of 75 ILCS 5/11-15.1-1 et. seq. and does thereby subject the Real Estate described above to the ordinances, control, and jurisdiction of the Village of Kirkland in all respects the same as property that lies within the corporate limits of the Village, in accordance with the requirements of 75 ILCS 5/11-15.1-2.1(a).

Section 2. Agreement: Compliance and Validity.

A proper Petition, with an Annexation Plat prepared by Landowner, has been filed, or will be filed, with the Clerk of the Village pursuant to and in accordance with provisions of 65 ILCS 5/11-15.1-1.

Section 3. Enactment of Annexation Ordinance.

The Village, within sixty (60) days of the execution of this Agreement by the Village, will enact a valid and binding ordinance (hereinafter referred to as the "Annexation Ordinance") annexing the Subject Property to the Village. Said Annexation Ordinance shall be recorded with the DeKalb County Recorder's Office along with the Plat of Annexation. Recordation shall take place no more than ten (10) days after the enactment of the Annexation Ordinance. The Village shall send all notices required by law to be sent in connection with the enactment of such Ordinance.

Section 4. Enactment of Zoning Ordinance.

Contemporaneously with the passage of the Annexation Ordinance, the Village shall rezone the entire Subject Property to R-1 Single Family Residential zoning. No further action need be taken by the Owner to cause the property to be zoned as set forth above once the Subject Property is annexed to the Village.

Section 5. Approval of Plats.

The Parties acknowledge that the Subject Property will be developed in stages, requiring the submittal of plats and plans for each stage or unit.

The Village agrees to approve engineering plans and final Plat of Subdivision of the Subject Property upon submission by the Petitioners of complete and proper materials as required for the issuance of appropriate building and other permits and subdivision approval based on final plans and drawings of the development of the Property submitted by Petitioners and approved by the Village Engineer, provided that said plat and other materials shall substantially conform to the Preliminary Plat of Subdivision attached hereto as Exhibit "B", and all applicable laws and ordinances, unless waived by this agreement.

In addition to meeting minimum standards of development, except as waived, the final plat of each phase shall provide for the installation and maintenance of appropriate screening as may be necessary to provide separation from adjacent property, and provide for easements for said installation and maintenance. In the event of a phased development, then each phase shall be complete and comply fully with all applicable laws and ordinances in all engineering specifics, including, but not limited to, the provision of adequate storm water drainage and retention/detention.

Section 6. Compliance with Applicable Ordinances.

Owner agrees to comply with all ordinances of the Village amended from time to time in the development of the Subject Property, unless expressly waived or varied in this Agreement or pursuant thereto; provided that all new ordinances, amendments, rules and regulations relating to zoning, building and subdivision of land adopted after the date of this Agreement shall not be arbitrarily or discriminatorily applied to the Subject Property, but shall be equally applicable to all property similarly zoned. Notwithstanding anything to the contrary herein contained, it is understood that the zoning of the Subject Property shall not be reclassified without Owner's consent during the term of this Agreement.

Section 7. Storm Drain and Water Main Systems.

The Landowner shall, at Landowner's sole cost and expense, provide proper storm drains and water main systems in accordance with the Village's standards and ordinances. The Village agrees to cooperate with the Landowner in obtaining the necessary permits as may be required from time to time by both federal and state law, including, but not limited to, those permits required by the Illinois Environmental Protection Agency; provided that the Village's obligation shall not be deemed to include the maintenance of any litigation, and the Landowner shall indemnify and hold harmless from any cost or expense, including but not limited to court costs and attorneys' fees, incurred as a result of the Village's cooperation in this regard, any cost or expense incurred by the Village being payable by the Landowner from time to time immediately after demand by the Village. Upon proper completion of construction and satisfactory testing of the storm sewer and water main systems, the Village shall promptly accept such improvements and thereafter maintain such improvements.

The Landowner hereby represents and warrants to the Village that all improvements accepted by the Village will be free from any defect in construction or performance for a period of one (1) year from acceptance. In the event the foregoing warranty shall be untrue, then the Village may proceed to repair or replace the defective improvement and the Landowner agrees to indemnify and hold harmless the Village from any loss or expense, including but not limited to court costs and attorneys' fees incurred thereby, any loss or expense incurred by the Village being payable by the Landowner from time to time immediately after demand by the Village.

The size of all storm drains and water mains shall be determined by the Village Engineer, in accordance with recognized engineering standards.

Section 8. Wastewater Treatment and Disposal

The Landowner shall not be required to install sanitary sewers, and the Village agrees that a variation shall be approved for each phase of development exempting said subdivision from the normal minimum standards of development which require sanitary sewer, permitting each lot to be serviced by a septic system and septic filter field, and exempting all lots in the development from the requirement that homes utilizing septic systems be required to connect to the Village sewer system when a sewer is brought within a fixed distance of the lot. These exemptions shall not be applicable to any lots of less than 0.7 acres in area, and the Village shall not be required to issue building permits for lots of a smaller size until such time as provision may be made for sewer service.

Section 9. Well and Water Supply and Distribution Facility.

The Landowner shall, at Landowner's sole cost and expense, construct and/ or install a well and water supply and distribution facility, to service the development and other areas of the Village, to be constructed in accordance with plans and specifications approved by the Village Engineer and the Village Public Works Department. The diameter and capacity of the well shall be determined by the Village Engineer, in accordance with recognized engineering standards. The Landowner also agree that they shall construct and bear the cost of constructing a water main, of at least 12 inches in diameter, connecting the new well and distribution system within the development with the existing water supply and distribution system currently existing within the Village.

The Village agrees to cooperate with the Landowner in obtaining the necessary permits as may be required from time to time by both federal and state law, including, but not limited to, those permits required by the Illinois Environmental Protection Agency; provided that the Village's obligation shall not be deemed to include the maintenance of any litigation, and the Landowner shall indemnify and hold harmless from any cost or expense, including but not limited to court costs and attorneys' fees, incurred as a result of the Village's cooperation in this regard, any cost or expense incurred by the Village being payable by the Landowner from time to time immediately after demand by the Village. Upon proper completion of construction and satisfactory testing of the well and water supply and distribution facility, the Village shall promptly accept such improvements and thereafter maintain such improvements. The adequacy of construction and sufficiency of testing shall be determined by the Village Engineer and the Village Public Works Department in accordance with recognized engineering standards.

The Landowner hereby represents and warrants to the Village that all improvements accepted by the Village will be free from any defect in construction or performance for a period of one (1) year from acceptance. In the event the foregoing warranty shall be untrue, then the Village may proceed to repair or replace the defective improvement and the Landowner agrees to indemnify and hold harmless the Village from any loss or expense, including but not limited to court costs and attorneys' fees incurred thereby, any loss or expense incurred by the Village being payable by the Landowner from time to time immediately after demand by the Village.

The parties recognize that the water main connecting the development to the existing system and any additional capacity of the new well, beyond the needs of the development, will provide a benefit to adjacent and intervening properties, which will be able to connect to said water line and utilize additional well capacity at such time as development may occur on said parcels, hereinafter referred to as the "Benefited Property". The parties intend and agree that they shall enter into an agreement for recapture of those costs from developers of any such benefited property, under terms not inconsistent with the provisions of 65 ILCS 5/9-5-1. Such recapture agreement shall provide for the collection by the Village of the portion of the cost of the water main and additional well capacity allocated to the particular parcel of benefited property at the time that a water main for said property is connected to the main constructed by Landowner, or a developer connects to the Village main utilizing water over and above what the Village's existing wells were capable of producing, and for the payment of said collected amount to the Landowner.

Such agreement shall be prepared and entered into between the parties at such time as the cost and allocation formula has been determined and approved by the parties based upon the conclusions of their respective engineers.

Section 10. Roadways.

The Landowner shall construct all roadways required to be developed on the Subject Property. Said construction shall be completed in accordance with the Village's standards and ordinances, except that

(A) All roads constructed shall have a 66 foot right-of-way and a 24 foot paved surface centered over a 26 foot wide, 12" deep gravel bedrock surface, with ditches having a minimum depth of 18" on both sides, which shall drain to one of the areas described in Section 11. All roads shall be paved in two 11/2" lifts. Prior to the occupancy of any building, the gravel base shall be constructed to the approved thickness. Once 50% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the first layer of the bituminous surface has been installed throughout that phase. Once 80% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the final layer of the bituminous surface has been installed throughout that phase. The Landowner shall maintain the stone base and shall seal coat the same to control dust if required by Village prior to the installation of the bituminous surface. Landowner shall be responsible for maintenance and snow removal on all roads in the subdivision until said roads are accepted by the Village. Upon the proper completion of the street construction, the Village shall promptly accept such improvements and thereafter maintain such improvements;

(B) No sidewalks shall be required; and

(C) No street lights shall be required, provided that the covenants of the development shall require the installation of a light post at the front of every lot, within 10 feet of the right of way to provide illumination of a minimum of 75 watts and that the failure of the owner to install and maintain said lighting shall be a violation of said covenant. No temporary or permanent occupancy permits shall be issued for any home which is not so equipped. The covenants shall require that all property owners keep said lights in working order and keep bulbs installed at all times, and shall provide further that the Village may enforce that specific covenant as a village ordinance.

The Landowner hereby represents and warrants to the Village that all improvements accepted by the Village will be free from any defect in construction or performance for a period of one (1) year from acceptance. In the event the foregoing warranty shall be untrue, then the Village may proceed to repair or replace the defective improvement and the Landowner agrees to indemnify and hold harmless the Village from any loss or expense, including but not limited to court costs and attorneys' fees incurred thereby, any loss or expense incurred by the Village being payable by the Landowner from time to time immediately after demand by the Village. In addition to the foregoing warranty, the Landowner hereby undertakes to repair, prior to acceptance by the Village, at Landowner' sole cost and expense, any damage or deterioration to a bituminous surface.

Section 11. Storm Water Storage.

The Landowner shall provide storm water storage in accordance with the Village's standards and ordinances. The surface area of the storm water storage basins shall be maintained by the owner or owners of the property upon which the storm water storage basins are constructed. After completion and testing, all manholes, catch basins, storm sewers and any other subterranean appurtenances shall be maintained by the Village. All storm water storage areas shall be above the projected 100 year base flood elevation.

Section 12. Approval by Village Engineer of All Engineering Design.

Landowner agrees that all engineering design with regard to size, capacity, storage, materials and other specifications regarding storm sewer, and water main systems, construction or modifications, and storm water storage shall be subject to approval by the Village Engineer, pursuant to applicable Village ordinances and regulations, in accordance with recognized engineering standards.

Section 13. Dedication of Improvements.

(A) The Landowner shall dedicate to the Village the Roadways, the Public Improvements, certain Water Lines and certain Storm Sewers. The Village shall promptly accept such improvements upon completion of construction of same and thereafter maintain such improvements, unless otherwise specified herein.

The Landowner hereby represents and warrants to the Village that all improvements accepted by the Village will be free from any defect in construction or performance for a period of one (1) year from acceptance. In the event the foregoing warranty shall be untrue, then the Village may proceed to repair or replace the defective improvement and the Landowner agrees to indemnify and hold harmless the Village from any loss or expense, including but not limited to court costs and attorneys' fees incurred thereby, any loss or expense incurred by the Village being payable by the Landowner from time to time immediately after demand by the Village.

(B). The Landowner shall grant to the Village nonexclusive utility easements (the "Easements") for maintenance and repair of the aforesaid utilities to be constructed on the Subject Property and dedicated to the Village as indicated on the Final Plat to be recorded as referred to above. For the purposes of this Section 11(b), underground utilities shall include ground-level facilities and above-ground –level facilities of a height not greater than three (3) feet associated with said utilities, including, by way of example, manholes and hydrants.

Section 14. Irrevocable Letter of Credit.

In lieu of a construction bond or development bond or bonds, the Village will require an irrevocable letter of credit from a financial institution to guarantee construction and quality of all public facilities to be constructed in any stage or unit of development for which approval is sought. Said letter of credit shall be in the amount of one hundred percent (100%) of the contract costs of construction of all of the public facilities in the unit or stage or one hundred twenty five percent (125%) of Landowner' engineer's contract estimate for the unit or stage as approved by the Village Engineer; and said letter of credit shall be payable to the Village.

As the Landowner completes items within each letter of credit, subject to approval by the Village Engineer, the letter of credit shall be abated accordingly. Landowner agrees to cause the letter of credit to be extended to cover the actual time of construction.

Section 15. Interim Uses.

All or any portion of the Subject Property may be used for farming and ancillary uses prior to commencement of construction on such portion of the Subject Property.

Section 16. Model Homes.

Subject to the restrictions of Section 18 hereof, the Landowner may utilize model sales facilities and temporary parking facilities in any residential unit or stage on the Subject Property from the time a Final Plat is recorded for such part of the Subject Property until ninety (90) days after occupancy permits have been issued for ninety percent (90%) of the dwelling units permitted within the portion of the Subject Property zoned for single family residences; such temporary parking facilities shall be removed by Owner at the end of such ninety (90) day period, at the request of the Village.

Section 17. School District Donation.

The Landowner shall make a cash donation to the Hiawatha School District in the amount as provided by Village School Land Cash Ordinance (Kirkland Village Code 10-5-1 through 10-5-12) now in effect or as subsequently amended. Said donation shall be payable on a pro rata basis at the time of the issuance of each occupancy permit for each residential property, and the parties stipulate that the amount of said donation shall be determined in accordance with the Village School Land Cash Ordinance..

The parties stipulate that said contribution may be utilized by the Hiawatha School District for any of the purposes enumerated in Section 10-5-3(A) of the Kirkland Village Code, and not merely for the acquisition of land, notwithstanding the decision of the Illinois Appellate Court in Thompson v Newark 2-01-0542 (Ill App 3d 2002).

The Landowner shall also be subject to all other statutory and Village requirements and specifications, as provided by applicable statute, Village ordinance or this Agreement.

Section 18. Impact Fees.

Landowner agree on behalf of themselves, and their successors, heirs , and assigns to pay to the Village, in the amounts and the manner set forth therein, all of the Developmental Impact Fees described in Title 10, Chapter 6 of the Kirkland Village Code, except that the Village agrees to waive the fees provided for in 10-6-6 and 10-6-7, in consideration of the undertakings and promises of the Landowner regarding septic systems and water distribution facilities contained in Sections 8 and 9 of this agreement.

In addition, Landowner agree that there shall be due a supplemental cash contribution of $2, 275 per lot to be utilized for infrastructure repair and/or improvement within and throughout the Village, including but not limited to street and road projects which are beneficial to the citizens of the village as a whole, and not exclusively the residents of the Development.

The Landowner stipulate and agree that these fees shall be paid in consideration of the various agreements and promises made by the Village in this agreement, and that this agreement is made with full knowledge of the existence and possible import of the decision of the Illinois Appellate Court in Thompson v Newark 2-01-0542 (Ill App 3d 2002).

Village agrees that all impact fees payable on homes constructed by Rood construction shall be deferred from the time of the issuance of the building permit until the time of the issuance of the occupancy permit. Impact fees for homes built by other builders shall be due at the issuance of the building permit. Any model home built by Rood Construction, and declared to be a model home at the time a building permit is issued, shall be excepted from the payment of said impact fees until closing of sale of said home.

Section 19. Water and Sewer Fees.

Water and sewer hook-up fees shall be waived on all homes constructed on the Subject Property by Rood Construction, in consideration of the undertakings and promises of the Landowner regarding wastewater treatment facilities and water distribution facilities contained in Sections 8 and 9 of this agreement.

Water and sewer hook-up fees shall be charged for all other homes constructed on the Subject Property and said fees shall not be reduced, unless reduced for the Village as a whole, nor shall said fees be locked in. Any increase in the fees charged in the Village as a whole shall apply.

The fee for the installation of water meters shall be charged for all homes and dwelling units constructed on the Subject Property, and said fees shall not be reduced, unless reduced for the Village as a whole, nor shall said fees be locked in. Any increase in the fees charged in the Village as a whole shall apply.

Section 20. Building Permit Timing.

No building permit shall be issued for construction of any building, except for a single model home, in the first phase only, on any part of the Subject Property until after the engineering plans and a Final Plat have been approved and a Final Plat has been recorded for the unit or phase in which the building permit or permits are requested, nor shall any building permit be issued prior to the time that storm sewer, water, and stone base are constructed and tested, and roads are passable for ingress and egress by emergency and inspection vehicles.

Section 21. Building Code Applicability

All buildings constructed upon the Subject Property shall be constructed in accordance with the requirements of the official Building Codes of the Village of Kirkland as in effect upon the date of this agreement, except that the required energy value for insulation to be installed in the single family residences shall be reduced to the extent necessary to permit construction according to the same standards which are permitted in the construction of new homes in Phase III of Country Meadows, a subdivision currently being developed in the Village.

Section 22. Minimum Unit Size.

The single-family residences shall all have a minimum of two-car garages and shall meet or exceed 1600 square feet of living area for one-story residences and shall meet or exceed 1900 square feet of living area for two-story residences.

Section 23. Enforceability of the Agreement.

This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties by an appropriate action at law or in equity to secure the performance of the provisions and covenants herein described. If any provision of this Agreement is held invalid, such provisions shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

It is the agreement of the parties that, if any pertinent existing ordinances or resolutions, or interpretations thereof, of the Village be in any way inconsistent or in conflict with the provisions hereof, then the provisions of this Agreement shall constitute a lawful binding amendment thereof, and shall supersede the terms of said inconsistent ordinances or resolutions or interpretations thereof as they may relate to the Subject Property.

Section 24. Flood Insurance.

The Landowner further agrees to provide to all appropriate governmental agencies all necessary documentation and information to exempt the Subject Property, or any portion thereof, from any federally mandated flood insurance, if said exemption can be procured.

Section 25. Mowing of Open Areas and Retention Area.

The Landowner further agrees to mow all open areas and retention areas that are not being farmed during all phases of construction pursuant to Village ordinances.

Section 26. Village Expenses

Landowner shall be responsible for any and all expenses incurred by the Village in connection with this agreement, the annexation, zoning, and platting of the subject Property, and the examination, testing, approval, or review of any and all improvements to said property in connection with Landowner' project, including, but not limited to, engineering fees for both review and design, attorneys fees, survey expenses, application fees, and recording fees, whether incurred before or after the signing of this agreement. To insure prompt payment, Landowner has previously tendered the sum of Five Thousand Dollars ($5,000.00) to be held by the Village in escrow. Upon five days written notice to Landowner, the Village may pay any of the aforesaid expenses as they come due out of said escrow. At any time that said escrow shall have a balance of less than $2000.00, Village shall notify Landowner, who shall thereupon make an additional deposit sufficient to restore the balance to the original $5,000.00. The balance shall be refunded to landowner at the completion of the project , along with an accounting therefore, if requested by Landowner at that time.

Section 27. Term of Agreement

This Agreement shall be for a full term of twenty (20) years commencing as of the date hereof. It is agreed that in the event the annexation of the Real Estate or the terms of this Agreement are challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty (20) year term; provided, however, that this holding period for legal proceedings shall be limited to a period of one (1) year. It is further agreed that if the annexation of the subject Real Estate is challenged in any court proceeding, it shall not affect the binding nature of this Agreement.

Section 28. Miscellaneous

The following provisions shall apply to this agreement:

A. Recitals. The recitals set forth at the commencement of this Agreement are intended to be part of this Agreement.

B. Pronouns. Any word in the text of this Agreement shall be read as singular or plural, and/or as masculine, feminine, or neuter, as may be necessary to give the intended meaning thereto and/or to carry out the intention of the parties.

C. Oral Amendments. No covenant, promise, or undertaking shall be effective to modify or amend this Agreement or to waive or relinquish any right provided by the terms and provisions hereof, unless said covenant, promise, or undertaking shall be reduced to a writing which is duly executed by both parties.

D. Other Agreements. This Agreement contains a full and complete recitation of the understanding between the parties. No other representations, warranties, promises, covenants, or undertakings have been made by either party to the other as an inducement to enter into this Agreement.

E. Governing Law. This Agreement shall be construed and interpreted under the laws of the State of Illinois, without regard for the later domicile or residence of either party. Venue shall be proper only in DeKalb County, the location where this Agreement was executed.

F. Paragraph Headings. The article and paragraph captions contained in this Agreement are for convenience only and shall not limit, amplify or otherwise constitute a part of this Agreement nor be considered in the construction or interpretation of any provision hereof.

G. Severability and Court Amendment. If any provision of this agreement shall be held to be invalid or unenforceable by reason of the operation of any applicable law, or by reason of the interpretation placed herein by any court or other governmental body, (i) this Agreement shall be construed as not containing such provision and a substitute provision shall be inserted therefore by such court or other governmental body which effectuates to the maximum extent permitted by law the intent of this Agreement, and (ii) any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

H. No Waiver. The waiver of any term or provision of this Agreement shall not constitute a waiver of any other term or provision of this Agreement, nor shall the right to require any enforcement of any term or provision of this Agreement be permanently waived, if a continuing breach of any such term or provision arises.

I. Binding on Assigns. All terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto, their heirs, executors, administrators, successors and assigns.

J. Indemnity. Each of the parties (the "Indemnifying Party") agrees to indemnify, hold harmless and defend each other party from and against (a) any and all liability, loss, cost and damage ("Loss") and (b) reasonable attorneys' fees and expenses, court costs and all other reasonable out-of-pocket expenses ("Expenses") incurred by such other party (the "Indemnified Party"), in connection with or arising out of: (i) any breach of any warranty or the inaccuracy of any representation made by such Indemnifying Party in this Agreement or in any certificate, document or instrument delivered by or on behalf of such Indemnifying Party pursuant hereto; and (ii) any material breach by such Indemnifying Party of, or any other failure of such Indemnifying Party to perform, any of its obligations under this Agreement or under any instrument contemplated hereby. Each of the parties to this Agreement agrees to give prompt notice to all other parties of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity shall be sought hereunder. The Indemnifying Party (or parties) shall have the right to assume the defense of any claim, suit, action or proceeding at its own expense, and, if at the request and expense of the Indemnifying Party, shall assume such defense. No party shall be liable under this paragraph for any settlement effected without its or any claim, litigation or proceeding in respect of which indemnity may be sought hereunder. Failure by the indemnified party to give prompt Notice shall not limit its rights other than this Agreement. In the event of any dispute concerning the terms of this Agreement, then the prevailing party shall be entitled to collect all its costs associated with the settlement of such dispute, including, but not limited to, its attorneys' fees and court costs.

K. Counterparts; Execution via Facsimile. This Agreement may be executed in multiple counterparts, each of which shall be deemed enforceable without production of the others. Execution and exchange of documents via facsimile, against acknowledgment of receipt thereof, shall be permitted; provided, that the party executing or sending documents via facsimile shall deliver to the party to whom such documents are sent, the originally signed or original documents within a reasonable period of time after facsimile transmission.

L. Survival of Representations, Warranties and Agreements. The representations, warranties and agreements made by the parties hereto shall survive the Termination.

M. Litigation. If any action at law or in equity, including an action for declaratory relief, is brought by a party hereto in connection with this Agreement or a breach hereof, the prevailing party in any final judgment or the non-dismissed party in the event of a dismissal shall be entitled to the full amount of all reasonable expenses, including all court costs and actual attorney's fees paid or incurred in good faith, in connection with such action.

N. Notices. Any notice ("Notices") or other communication given pursuant to this Agreement shall be in writing and, except as otherwise expressly provided, shall be: (i) mailed by registered or certified mail, postage prepaid; (ii) sent by telecopier against acknowledgment of receipt thereof; or (iii) delivered by messenger against receipt thereof, in each case to the parties at the address set forth below, or such other address as such party may designate to the other parties by written Notice hereunder. All such notices or other communications shall be deemed to have been received on the date of delivery by messenger or telecopy or, if mailed, on the fifth day after mailing.

WITH A COPY IN EACH CASE SENT TO:

Richard H. Schmack
Attorney for Village of Kirkland
584 West State Street
Sycamore, IL 60178
(815)895-2074
FAX (815)899-3847

Robert Rood
Rood Development
8705 North Rood Road
Kingston, IL 60145
(815) 784-5234
FAX (815) 784-5234

Each party shall be entitled to specify a different address for the receipt of subsequent notices by giving written notice thereof to the other parties in accordance with this paragraph.

IN WITNESS WHEREOF, the Corporate Authorities and Landowner have hereunto set their hands and seals and have caused this instrument to be executed and the corporate seal affixed hereto, all on the day and year first above written.

Exculpatory Clause attached hereto and made a part hereof

VILLAGE OF KIRKLAND

BY: _____
Leslie Bellah
VILLAGE PRESIDENT

ATTEST:

BY: _____
Kathryn McNeal
VILLAGE CLERK

VILLAGE OF KIRKLAND
CERTIFIED COPY
ILL.
CORPORATE SEAL

David R. Rood

Barbara L. Rood

Robert D. Rood

Ann M. Rood

This agreement is executed pursuant to and in the exercise of the power and authority granted to and vested in said Trustee as trustee of Trust Number 40-4235000. Petitioner executes this instrument solely in its capacity as Trustee as aforesaid and not in its own individual capacity, and any individual liability on its part is hereby waived and released.

In Witness Whereof, said Trustee has caused its corporate seal to be hereto affixed, and has caused its name to be signed to these presents by its Vice President, and attested to by its Secretary.

THE NATIONAL BANK AND TRUST COMPANY OF SYCAMORE, ILLINOIS as Trustee as aforesaid and not personally,

BY: _____
James J. Durbek, Vice President

ATTEST:

BY: _____
Diane M. Florschuetz, Secretary

This instrument is executed by the undersigned Trustee, not personally but solely as Trustee under the terms of that certain agreement dated the 1st day of March, 1995 creating Trust No. 40-423500, and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, representations and agreements herein made are made and intended, not as personal covenants, undertakings, representations and agreements of the Trustee, individually, or for the purpose of binding it personally, but this instrument is executed and delivered by The National Bank & Trust Company of Sycamore, as Trustee, solely in the exercise of the powers conferred upon it as such Trustee under said agreement and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against The National Bank & Trust Company of Sycamore, on account hereof, or on account of any covenant, undertaking, representation, warranty or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or though or under said parties or holder hereof.

2003 02 10 67

Exhibit "A"

The legal description of the subject parcel is as follows:

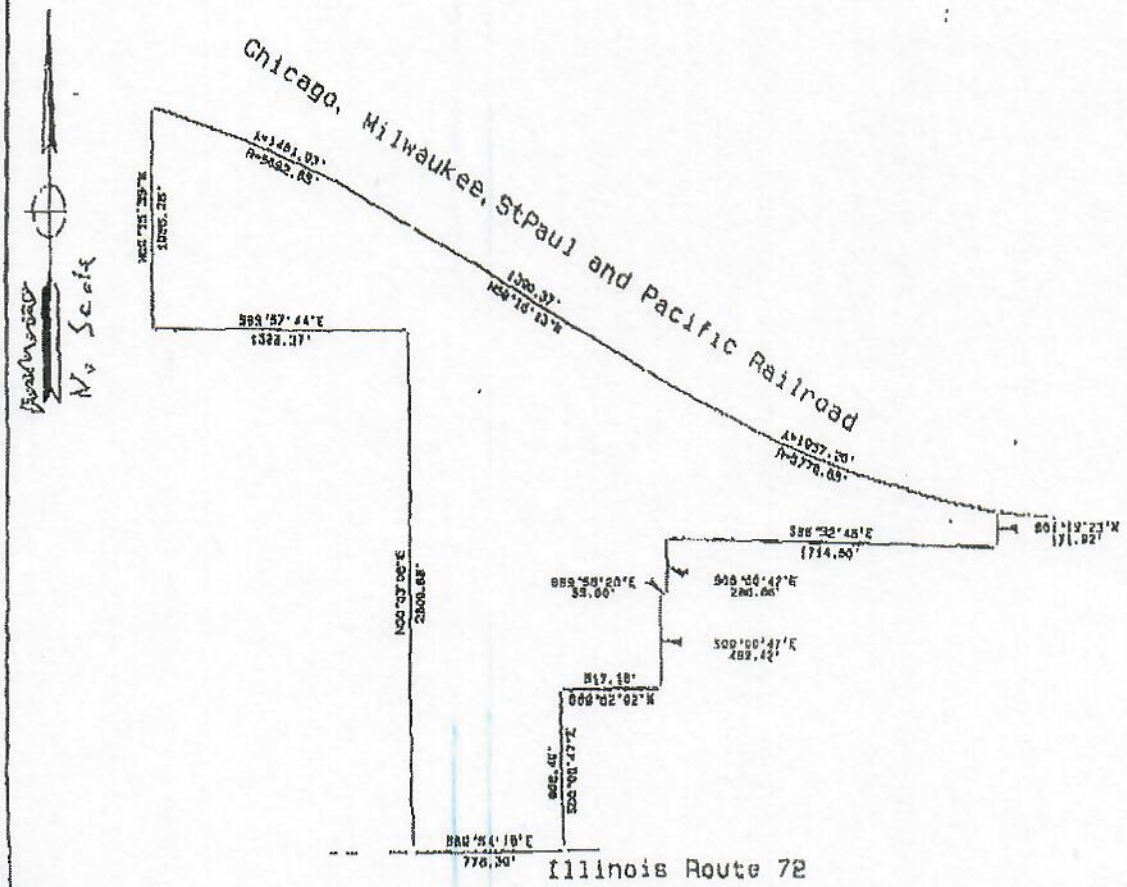
PART OF THE SOUTHWEST QUARTER OF SECTION 22 AND PART OF THE NORTH HALF OF SECTION 27 ALL IN TOWNSHIP 42 NORTH, RANGE 3, EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, SAID POINT BEING 1511.8 FEET NORTH OF THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 286.86 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 89 DEGREES 58 MINUTES 20 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 33.00 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST, A DISTANCE OF 482.42 FEET; THENCE SOUTH 89 DEGREES 52 MINUTES 02 SECONDS WEST, A DISTANCE OF 517.18 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST, A DISTANCE OF 806.40 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 72; THENCE NORTH 89 DEGREES 54 MINUTES 16 SECONDS WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 776.30 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 00 DEGREES 03 MINUTES 06 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 2609.88 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 89 DEGREES 57 MINUTES 44 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 1323.37 FEET TO THE NORTHWEST CORNER OF SAID SECTION 27; THENCE NORTH 00 DEGREES 15 MINUTES 39 SECONDS WEST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 22, A DISTANCE OF 1086.26 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE FORMER CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD (ALSO KNOWN AS SOO LINE RAILROAD); THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 1481.02 FEET ALONG AN ARC OF A CURVE TO THE RIGHT AND HAVING A RADIUS OF 5692.65 FEET, FORMING A CHORD BEARING OF SOUTH 66 DEGREES 43 MINUTES 25 SECONDS EAST TO THE END OF SAID CURVE; THENCE SOUTH 59 DEGREES 16 MINUTES 13 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1390.37 FEET TO THE BEGINNING OF A CURVE; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE 1957.25 FEET ALONG AN ARC OF A CURVE TO THE LEFT AND HAVING A RADIUS OF 5779.65 FEET FORMING A CHORD BEARING OF SOUTH 68 DEGREES 58 MINUTES, 19 SECONDS EAST TO THE END OF SAID CURVE; THENCE SOUTH 01 DEGREES 36 MINUTES 23 SECONDS WEST, A DISTANCE OF 172.41 FEET, THENCE NORTH 88 DEGREES, 32 MINUTES, 48 SECONDS WEST A DISTANCE OF 1714.50 FEET TO THE POINT OF BEGINNING.

2003021067

Exhibit A to Annexation agreement

MAP OF TERRITORY HEREBY ANNEXED TO THE VILLAGE OF KIRKLAND, ILLINOIS

PART OF THE SOUTHWEST QUARTER OF SECTION 22 AND PART OF THE NORTH HALF OF SECTION 27 ALL IN TOWNSHIP 42 NORTH, RANGE 3 EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, SAID POINT BEING 1511.8 FEET NORTH OF THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 259.64 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 89 DEGREES 56 MINUTES 20 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 264.00 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST, A DISTANCE OF 482.42 FEET; THENCE SOUTH 89 DEGREES 52 MINUTES 02 SECONDS WEST, A DISTANCE OF 517.18 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST A DISTANCE OF 808.40 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 72; THENCE NORTH 80 DEGREES 54 MINUTES 16 SECONDS WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 776.30 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 2630.88 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 89 DEGREES 57 MINUTES 44 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 1320.37 FEET TO THE NORTHWEST CORNER OF SAID SECTION 27; THENCE NORTH 00 DEGREES 15 MINUTES 30 SECONDS WEST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 22, A DISTANCE OF 1050.26 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE FORMER CHICAGO, MILWAUKEE, ST PAUL AND PACIFIC RAILROAD (ALSO KNOWN AS 900 LINE RAILROAD); THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 1461.02 FEET ALONG AN ARC OF A CURVE TO THE RIGHT AND HAVING A RADIUS OF 5692.69 FEET, FORMING A CHORD BEARING OF SOUTH 69 DEGREES 43 MINUTES 25 SECONDS EAST TO THE END OF SAID CURVE; THENCE SOUTH 50 DEGREES 18 MINUTES 13 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1350.37 FEET TO THE BEGINNING OF A CURVE; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE 1057.23 FEET ALONG AN ARC OF A CURVE TO THE LEFT AND HAVING A RADIUS OF 5779.65 FEET, FORMING A CHORD BEARING OF SOUTH 65 DEGREES 58 MINUTES 10 SECONDS EAST TO THE END OF SAID CURVE; THENCE SOUTH 01 DEGREES 35 MINUTES 23 SECONDS WEST A DISTANCE OF 172.41 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 48 SECONDS WEST A DISTANCE OF 1714.50 FEET TO THE POINT OF BEGINNING CONTAINING 114.81 ACRES MORE OR LESS



BECKER AND ASSOCIATES
ILLINOIS PROFESSIONAL LAND SURVEYOR
2011 SOUTH FOURTH STREET
DEKALB, ILLINOIS 60115
PHONE: 815-756-1797 FAX: 815-758-3308

2003021867

EXHIBIT D

30-
4PS
3 PGS

138443-ECMC

TRUSTEE'S DEED

THIS DEED IS BEING RE-RECORDED TO CORRECT TYPOGRAPHICAL ERROR IN DATE OF TRUST AGREEMENT

FILED FOR RECORD
DEKALB COUNTY, IL.
02 FEB -4 PM 2:10
Sharon R. Holmes
DEKALB COUNTY RECORDER

STATE OF ILLINOIS
STATE TAX
FEB.-4.02
DeKALB COUNTY

REAL ESTATE TRANSFER TAX
0091700
FP326654

DeKalb County Transfer Tax 758.50

2002002739

2004002818

GRANTOR, Edward Vander-Molen, of the Village Of Carol Stream, ILL, Seller and The National Bank & Trust Company of Sycamore, a National Banking Association of Sycamore, Illinois, as Trustee under the provisions of deed or deed in Trust, duly recorded and delivered to said Bank in pursuant of a trust agreement dated ~~3-1-96~~ 3-1-95 and known as Trust No. 40-423500, Buyer

Exempt under Provisions of Paragraph d Section 200/31-45, Real Estate Transfer Tax Act.

Date

Buyer, Seller or Representative

230 W. State Street
Sycamore, IL 60178

Witnesseth, that the said Seller, for consideration of Ten Dollars and other good and valuable considerations in hand paid does hereby grant, sell, convey and warrant unto The National Bank & Trust Company of Sycamore, Illinois as Trustee under a Trust Agreement dated March 1, 1995, the following described real estate, situated in DeKalb County, Illinois, to-wit:

Part of the Southwest ¼ of Section 22, and part Of the North ¼ of Section 27, all in Township 42 North, Range 3 East of the Third Principal Meridian, DeKalb County, Illinois, bounded and described as follows: Beginning at a point on the West line of the Northeast ¼ of said Section 27, said point being 1,611.8 feet North of the Southwest corner of said Northeast ¼; thence South 0 Degrees 00 Minutes 47 Seconds East along the West line of said Northeast ¼, a distance of 286.86 feet to the Northeast corner of the Southeast ¼ of the Northwest ¼ of said Section 27; thence North 89 Degrees 58 Minutes 20 Seconds West along the North line thereof, a distance of 33.00 feet; thence South 0 Degrees 00 Minutes 47 Seconds East, a distance of 482.42 feet; thence South 89 Degrees 52 Minutes 02 Seconds West, a distance of 517.18 feet; thence South 0 Degrees 00 Minutes 47 Seconds East, a distance of 806.40 feet to a point on the Northerly right of way line of Illinois Route 72; thence North

89 Degrees 54 Minutes 16 Seconds West along said Northerly right of way line, a distance of 776.30 feet to a point on the East line of the Southwest ¼ of the Northwest ¼ of said Section 27; thence North 0 Degrees 03 Minutes 06 Seconds East along said East line, a distance of 2, 609.88 feet to the Northeast corner of the Northwest ¼ of the Northwest ¼ of said Section 27; thence North 89 Degrees 57 Minutes 44 Seconds West long the North line thereof, a distance of 1,323.37 feet to the Northwest corner of said Section 27; thence North 0 Degrees 15 Minutes 39 Seconds West along the West line of the Southwest ¼ of Section 22, a distance of 1,086.26 feet to a point on the Southerly right of way line of the former Chicago Milwaukee, St. Paul and Pacific Railroad (also known as Soo Line Railroad); thence Southeasterly along said right of way line being a curve which is concave from Southerly and having a radius of 5,692.65 feet, an arc distance of 1,481.02 feet to the end of said curve; thence South 59 Degrees 16 Minutes 13 Seconds East along said Southerly right of way line, a distance of 1,390.37 feet to the beginning of a curve; thence Southeasterly along said curve, being concave from Northerly and having a radius of 5,779.65 feet, an arc distance of 1,957.25 feet; thence South 01 Degrees 35 Minutes 23 Seconds West, a distance of 172.41 feet; thence North 88 Degrees 32 Minutes 48 Seconds West, a distance of 1,714.50 feet to the point of beginning,

together with the tenements and appurtenances thereunto belonging. This property is not home stead real estate.

SUBJECT TO: Real estate taxes for the year 2001 and subsequent years; (2) Covenants, conditions restrictions and easements apparent; hereby releasing and waiving all rights under and by virtue of Homestead Exemption Laws of the State of Illinois.

Permanent Tax Nos.: 01-27-100-002
01-27-200-007
01-27-100-003
01-22-200-002

2004002818

2002002739

Known as: Ill Rte 72 West, Kirkland, Illinois 60146

Dated January 31, 2002

EDWARD VANDERMOLEN

FILED FOR RECORD
DEKALB COUNTY, IL
04 FEB 13 PM 3:03
Sharon R. Holmes
DEKALB COUNTY RECORDER

STATE OF ILLINOIS)
) ss.
COUNTY OF DEKALB)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Edward VanderMolen, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 31st day of January, 2002.

Notary Public

"OFFICIAL SEAL"
JAMES D. O'GRADY
Notary Public, State of Illinois
My Commission Expires 11-20-05

My Commission expires: 11/20/2005

Prepared by: James D. O'Grady, 30700 Carolwood Dr., Genoa, IL 60135

Grantees Address:
Tax Bill to) David Rood
420 N. Locust
Genoa, IL 60135

Return to
National Bank & Trust Co
200 W. State
Sycamore, IL 60178
Attn: Trust Department

~~2002002739~~ 2004002818

A80

SHARON L. HOLMES
RECORDER OF DEEDS OF DEKALB COUNTY
AFFIDAVIT - PLAT ACT

STATE OF ILLINOIS }
COUNTY OF DEKALB } ss.

James J. Dvorak, being duly sworn on oath, states that he resides at 230 West State Street, Sycamore, Illinois 60178. That the attached (deed/lease) is not in violation of 765 ILCS 205/1 for one of the following reasons:

1. The proposed conveyance does not involve the subdivision of land as the term "subdivision" is used in Section 1 of "an Act to revise the law in relation to plats" approved March 1874, as amended from time to time.
2. The sale or exchange is of an entire tract of land not being a part of a larger tract of land.
3. The division or subdivision of land is into parcels or tracts of 5 acres or more in size which does not involve any new streets or easements of access.
4. The division is of lots or blocks of less than 1 acre in a recorded subdivision which does not involve any new streets or easements of access.
5. The sale or exchange of parcels of land is between owners of adjoining and contiguous land.
6. The conveyance is of parcels of land or interests therein for use as a right-of-way for railroads or other public utility facilities which does not involve any new streets or easements of access.
7. The conveyance is of land owned by a railroad or other public utility which does not involve any new streets or easements of access.
8. The conveyance is of land for highway or other public purpose or grants of conveyances relating to the dedication of land for public use or instruments relating to the vacation of land impressed with a public use.
9. The conveyance is made to correct descriptions in prior conveyances.
10. The sale or exchange is of parcels or tracts of land following the division into no more than two parts of a particular parcel or tract of land existing on July 17, 1959, and not involving any new streets or easements of access.
11. The sale is of a single lot of less than 5 acres from a larger tract, the dimensions and configurations of said larger tract having been determined by the dimensions and configuration of said larger tract on October 1, 1973, and no sales, prior to this sale, of any lot or lots from said larger tract having taken place since October 1, 1973, and a survey of said single lot having been made by a registered land surveyor.

CIRCLE NUMBER ABOVE WHICH IS APPLICABLE TO ATTACHED DEED OR LEASE

Affiant further states that he makes this affidavit for the purpose of inducing The Recorder of Deeds of DeKalb County, Illinois to accept the attached for recording. In addition, where item 11 is above checked, affiant further states that all local requirements applicable to the subdivision of land are met, by the attached deed/lease and the tract described therein.

"OFFICIAL SEAL"
CAROL L. LUXTON
Notary Public, State of Illinois
My Commission Expires 10/22/08

Impress Notary Seal Here

James J. Dvorak
(Buyor, Seller or Representative)
James J. Dvorak

SUBSCRIBED AND SWORN TO BEFORE ME
this 11th day of February, 2004.

Carol L. Luxton
Notary Public Carol L. Luxton

DKCOPLATAFFI/1004

2004002818

138443-ECTC

18-
3PP

TRUSTEE'S DEED

FILED FOR RECORD
DEKALB COUNTY, IL.
02 FEB -4 PM 2:10
Sharon L. Holmes
DEKALB COUNTY RECORDER

STATE OF ILLINOIS
STATE TAX
FEB.-4.02
DeKALB COUNTY

REAL ESTATE TRANSFER TAX
00917.00
FP326654

DeKalb County Transfer Tax 458.50

2002002739

GRANTOR, Edward Vander-Molen, of the Village Of Carol Stream, ILL, Seller and The National Bank & Trust Company of Sycamore, a National Banking Association of Sycamore, Illinois, as Trustee under the provisions of deed or deed in Trust, duly recorded and delivered to said Bank in pursuant of a trust agreement dated 3-1-96 and known as Trust No. 40-423500, Buyer.

230 W. State Street
Sycamore, IL 60178

Witnesseth, that the said Seller, in consideration of Ten Dollars and other good and valuable considerations in hand paid does hereby grant, sell, convey and warrant unto The National Bank & Trust Company of Sycamore, Illinois as Trustee under a Trust Agreement dated March 1, 1995, the following described real estate, situated in DeKalb County, Illinois, to-wit:

Part of the Southwest ¼ of Section 22, and part Of the North ½ of Section 27, all in Township 42 North, Range 3 East of the Third Principal Meridian, DeKalb County, Illinois, bounded and described as follows: Beginning at a point on the West line of the Northeast ¼ of said Section 27, said point being 1,611.8 feet North of the Southwest corner of said Northeast ¼; thence South 0 Degrees 00 Minutes 47 Seconds East along the West line of said Northeast ¼, a distance of 286.86 feet to the Northeast corner of the Southeast ¼ of the Northwest ¼ of said Section 27; thence North 89 Degrees 58 Minutes 20 Seconds West along the North line thereof, a distance of 33.00 feet; thence South 0 Degrees 00 Minutes 47 Seconds East, a distance of 482.42 feet; thence South 89 Degrees 52 Minutes 02 Seconds West, a distance of 517.18 feet; thence South 0 Degrees 00 Minutes 47 Seconds East, a distance of 806.40 feet to a point on the Northerly right of way line of Illinois Route 72; thence North

2002002739

89 Degrees 54 Minutes 16 Seconds West along said Northerly right of way line, a distance of 776.30 feet to a point on the East line of the Southwest ¼ of the Northwest ¼ of said Section 27; thence North 0 Degrees 03 Minutes 06 Seconds East along said East line, a distance of 2, 609.88 feet to the Northeast corner of the Northwest ¼ of the Northwest ¼ of said Section 27; thence North 89 Degrees 57 Minutes 44 Seconds West long the North line thereof, a distance of 1,323.37 feet to the Northwest corner of said Section 27; thence North 0 Degrees 15 Minutes 39 Seconds West along the West line of the Southwest ¼ of Section 22, a distance of 1,086.26 feet to a point on the Southerly right of way line of the former Chicago Milwaukee, St. Paul and Pacific Railroad (also known as Soo Line Railroad); thence Southeasterly along said right of way line being a curve which is concave from Southerly and having a radius of 5,692.65 feet, an arc distance of 1,481.02 feet to the end of said curve; thence South 59 Degrees 16 Minutes 13 Seconds East along said Southerly right of way line, a distance of 1,390.37 feet to the beginning of a curve; thence Southeasterly along said curve, being concave from Northerly and having a radius of 5,779.65 feet, an arc distance of 1,957.25 feet; thence South 01 Degrees 35 Minutes 23 Seconds West, a distance of 172.41 feet; thence North 88 Degrees 32 Minutes 48 Seconds West, a distance of 1,714.50 feet to the point of beginning,

together with the tenements and appurtenances thereunto belonging. This property is not home stead real estate.

SUBJECT TO: Real estate taxes for the year 2001 and subsequent years; (2) Covenants, conditions restrictions and easements apparent; hereby releasing and waiving all rights under and by virtue of Homestead Exemption Laws of the State of Illinois.

Permanent Tax Nos.: 01-27-100-002
01-27-200-007
01-27-100-003
01-22-200-002

2002002739

Known as: Ill Rte 72 West, Kirkland, Illinois 60146

Dated January 31, 2002

EDWARD VANDERMOLEN

STATE OF ILLINOIS)
) ss.
COUNTY OF DEKALB)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Edward VanderMolen, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 31st day of January, 2002.

Notary Public

"OFFICIAL SEAL"
JAMES D. O'GRADY
Notary Public, State of Illinois
My Commission Expires 11-20-05

My Commission expires: 11/20/2005

Prepared by: James D. O'Grady, 30700 Carolwood Dr., Genoa, IL 60135

Grantees Address:
Tax Bill to) David Rood
420 N. Locust
Genoa, IL 60135

Return to
National Bank & Trust Co
230 W. State
Sycamore, IL 60178
Attn: Trust Department

2002002739

EXHIBIT F

FILED FOR RECORD
DEKALB COUNTY, IL.

03 JUL 23 PM 3:21

Sharon L. Holmes
DEKALB COUNTY RECORDER

42
10 Rpp
N/C
12 pgs

FILED FOR RECORD
DEKALB COUNTY, IL.

03 JUN 23 AM 11:42

Sharon L. Holmes
DEKALB COUNTY RECORDER

~~2003017448~~

2003021068

Ordinance 03-07 is to annex certain property into the Village of Kirkland.
The petition for annexation is an attachment to the ordinance.

Re-recorded to be an
Annexation + addl
Certification + legal
description page

Document prepared by: Richard Schmack
~~Return to~~: Village of Kirkland
Kathryn McNeal, Clerk
511 W. Main St.
Kirkland, IL 60146

"Keep in File"
Plat Cabinet 9
Slide 66-A

~~2003017448~~

2003021068

ORDINANCE 03-07

AN ORDINANCE TO ANNEX
CERTAIN PROPERTY INTO
THE VILLAGE OF KIRKLAND

ORDINANCE NO. 03-07

WHEREAS, David R. Rood, Barbara L. Rood, Robert D. Rood, and Ann M. Rood, collectively doing business as Rood Development, and the National Bank and Trust Company of Sycamore, Illinois, as Trustee of Trust Number 40-423500, have filed with the Village of Kirkland a Petition for Annexation, and

WHEREAS said Petition requests the annexation of certain property legally described as set forth in Exhibit "A" attached hereto, and

WHEREAS said Real Estate described in Exhibit "A" consists of 114.27 acres, more or less, in unincorporated Franklin Township, Illinois, located immediately north of Illinois Route 72, west of and adjacent to the corporate limits of the Village of Kirkland, Illinois, and

WHEREAS said Real Estate is accurately depicted on the Annexation Plat attached hereto as Exhibit "B", and

WHEREAS said Real Estate is presently contiguous to the corporate limit of the Village, and may lawfully be annexed to the Village under 65 ILCS 5/7-1-1 et. seq., and

WHEREAS there are no dwellings presently located on the Real Estate and no electors reside thereon, and

WHEREAS, said Real Estate is located in the Kirkland Community Fire Protection District, but notice of annexation to said district was required, as the Village of Kirkland does not have a Fire Department, and the property will not be removed from said Fire Protection District as the result of annexation, and

WHEREAS said Real Estate is not located in a Library District, so no notice of annexation is required to any such district and

WHEREAS the only public road upon or adjacent to said real estate is Illinois State Route 72, so that no notice is required to the township Road Commissioner or the County Engineer, and

WHEREAS Petitioners have requested annexation of the Real Estate in accordance with 65 ILCS 5/7-1-8, and have complied with all requirements for annexation pursuant to said statute, and

WHEREAS, the Village Board having determined that it is in the best interest of the Village, and in furtherance of the public health, welfare and morals that said Real Estate be annexed into the corporate limits of the Village of Kirkland.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF KIRKLAND AS FOLLOWS:

SECTION 1. That the Real Estate described in Exhibit "A" and depicted in Exhibit "B", together with the entire width of the right-of-way of Illinois State Route 72 at all points at which said highway is adjacent to the Real Estate is hereby annexed to the Village of Kirkland pursuant to 65 ILCS 5/7-1-8.

SECTION 2. That the Clerk of the Village shall record in the office of the Recorder of Deeds of DeKalb County and file in the office of the County Clerk of DeKalb County a copy of this ordinance together with an accurate map of the annexed territory.

SECTION 3. That the Clerk of the Village shall report the annexation by certified or registered mail to the election authorities having jurisdiction in the territory and the post office branch serving the territory within 30 days of the annexation.

SECTION 4. That this Ordinance shall, by the authority of the Board of Trustees of the Village of Kirkland, be published in pamphlet form and

that this Ordinance shall be in full force and effect upon its passage according to law.

PASSED BY THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF KIRKLAND at a regular meeting thereof held on the 2nd day of June, 2003, and approved by me as Village President on the same day.

AYES : 3

NAYS :

ABSENT: 3

ADOPTED 6-2-03

APPROVED 6-2-03

PUBLISHED 6-2-03

ATTEST:

Kathryn Mcneal
VILLAGE CLERK
KATHRYN MCNEAL

Leslie C. Bellah
VILLAGE PRESIDENT
LESLIE C. BELLAH

VILLAGE OF KIRKLAND DE KALB CO. ILL. CORPORATE SEAL

~~2003 0 1 7 4 8~~ A99 2003 021068

Exhibit "B" to Petition for Annexation

MAP OF TERRITORY HEREBY ANNEXED TO THE VILLAGE OF KIRKLAND, ILLINOIS

PART OF THE SOUTHWEST QUARTER OF SECTION 22 AND PART OF THE NORTH HALF OF SECTION 27 ALL IN TOWNSHIP 42 NORTH, RANGE 3, EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, SAID POINT BEING 1511.8 FEET NORTH OF THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 266.66 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 89 DEGREES 56 MINUTES 30 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 483.42 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST, A DISTANCE OF 483.42 FEET; THENCE SOUTH 89 DEGREES 52 MINUTES 02 SECONDS WEST, A DISTANCE OF 517.18 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST, A DISTANCE OF 804.40 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 72; THENCE NORTH 89 DEGREES 54 MINUTES 16 SECONDS WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 776.30 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 00 DEGREES 03 MINUTES 05 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 2650.86 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 89 DEGREES 43 MINUTES 44 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 1323.37 FEET TO THE NORTHWEST CORNER OF SAID SECTION 27, THENCE NORTH 00 DEGREES 15 MINUTES 38 SECONDS WEST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 22, A DISTANCE OF 1084.28 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE FORMER CHICAGO, MILWAUKEE, ST PAUL AND PACIFIC RAILROAD (ALSO KNOWN AS 800 LINE RAILROAD); THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 1481.02 FEET ALONG AN ARC OF A CURVE TO THE RIGHT AND HAVING A RADIUS OF 5692.65 FEET, FORMING A CHORD BEARING OF SOUTH 88 DEGREES 43 MINUTES 25 SECONDS EAST TO THE END OF SAID CURVE; THENCE SOUTH 80 DEGREES 18 MINUTES 13 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1300.37 FEET TO THE BEGINNING OF A CURVE; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE 1057.25 FEET ALONG AN ARC OF A CURVE TO THE LEFT AND HAVING A RADIUS OF 5779.65 FEET, FORMING A CHORD BEARING OF SOUTH 85 DEGREES 58 MINUTES 19 SECONDS EAST TO THE END OF SAID CURVE; THENCE SOUTH 01 DEGREES 35 MINUTES 23 SECONDS WEST A DISTANCE OF 172.41 FEET, THENCE NORTH 88 DEGREES 32 MINUTES 48 SECONDS WEST; A DISTANCE OF 1714.60 FEET TO THE POINT OF BEGINNING CONTAINING 114.61 ACRES MORE OR LESS

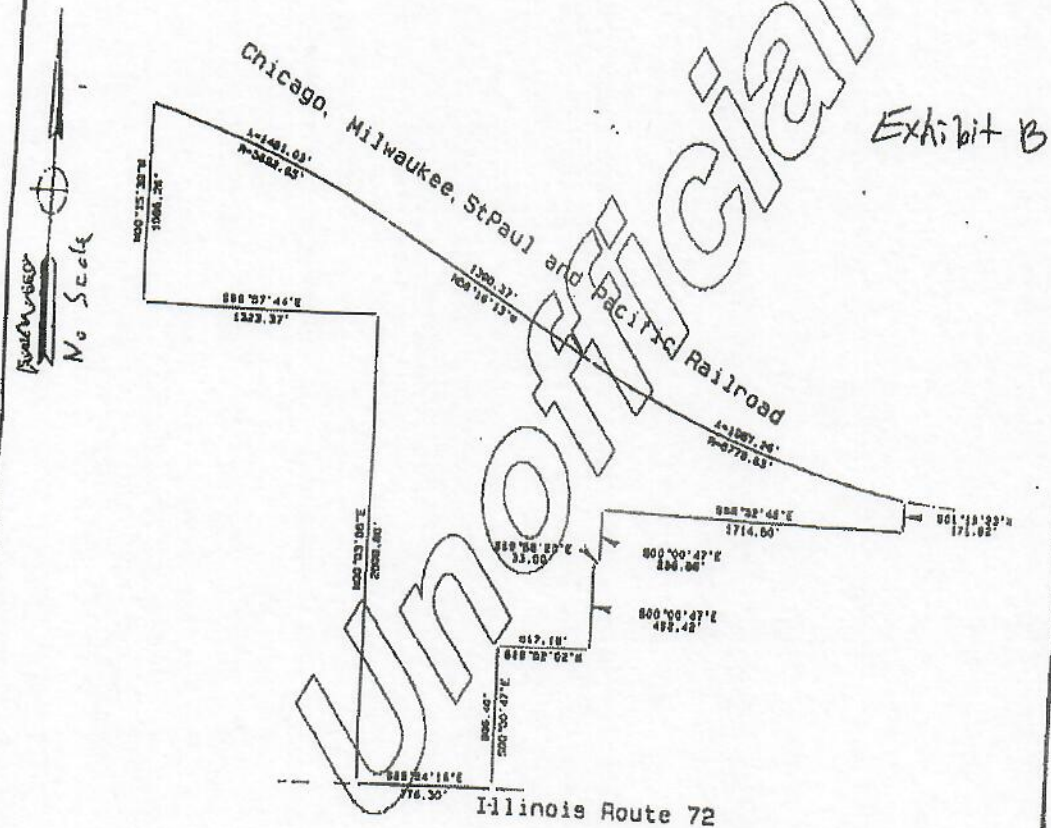


Exhibit B

BECKER AND ASSOCIATES
ILLINOIS PROFESSIONAL LAND SURVEYOR
3011 SOUTH FOURTH STREET
DEKALB, ILLINOIS 60115
PHONE: 815-756-1797 FAX: 815-758-3305

PETITION FOR ANNEXATION

NOW COME David R. Rood, Barbara L. Rood, Robert D. Rood, and Ann M. Rood, the Petitioners, being first sworn to oath, and the National Bank and Trust Company of Sycamore, Illinois, as Trustee of Trust Number 40-423500, petitioning the Village of Kirkland, an Illinois Municipal Corporation for the annexation of certain territory into the Village, and in support of said petition do state as follows:

1. The aforesaid Petitioners, David R. Rood, Barbara L. Rood, Robert D. Rood, and Ann M. Rood, are all of the principals of Rood Development, and are the beneficiaries of Trust Number 40-423500 at the National Bank and Trust Company of Sycamore, Illinois , which is the legal owner of record of a certain parcel of Real Estate, hereinafter referred to as the "Real Estate", the legal description of which is attached hereto as Exhibit "A".

2. The Real Estate described in Exhibit "A" consists of 114.27 acres, more or less, in unincorporated Franklin Township, Illinois, located immediately north of Illinois Route 72, west of and adjacent to the corporate limits of the Village of Kirkland, Illinois.

3. Said Real Estate is presently contiguous to the corporate limit of the Village, and may lawfully be annexed to the Village under 65 ILCS 5/7-1-1 et. seq.

4. There are no dwellings presently located on the Real Estate and no electors reside thereon.

5. The Real Estate is located in the Kirkland Community Fire Protection District, but notice of annexation to said district is not required, as the Village of Kirkland does not have a Fire Department, and the property will not be removed from said Fire Protection District as the result of annexation.

6. The Real Estate is not located in a Library District, so no notice of annexation is required to any such district.

7. The only public road upon or adjacent to said real estate is Illinois State Route 72, so that no notice is required to the township Road Commissioner or the County Engineer.

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8. Petitioners desire to annex said Real Estate to the Village of Kirkland, pursuant to the provisions of 65 ILCS 5/7-1-8, and have signed this document for said purpose, and have by valid letter of direction caused the legal owner said Real Estate to do the same.

WHEREFORE, Petitioners respectfully pray that the Corporate Authorities of the Village of Kirkland, Illinois take the following actions with respect to the Real Estate described in Exhibit "A":

A. That an Annexation Ordinance be passed pursuant to 65 ILCS 5/7-1-8 annexing into the Village of Kirkland all of the Real Estate together with the entire width of the right-of-way of Illinois State Route 72 at all points at which said highway is adjacent to the Real Estate.

B. That the Clerk of the Village record in the office of the Recorder of Deeds of DeKalb County and file in the office of the County Clerk of DeKalb County a copy of said ordinance together with an accurate map of the annexed territory.

C. That the Clerk of the Village report the annexation by certified or registered mail to the election authorities having jurisdiction in the territory and the post office branch serving the territory within 30 days of the annexation.

Exculpatory Clause attached hereto and made a part hereof.

David R. Rood

Barbara L. Rood

Robert D. Rood

Ann M. Rood

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~~2003017448~~ 2003021068

STATE OF ILLINOIS
} SS
COUNTY OF DEKALB

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT David R. Rood, Barbara L. Rood, Robert D. Rood, and Ann M. Rood, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and being first sworn to oath did in my presence signed, seal and deliver the said instrument for the uses and purposes therein set forth, as their free and voluntary act, and further that they stated under oath and penalties of perjury that each and every representation contained therein was and is true to the best of their knowledge and belief.

Given under my hand and notarial seal this 2nd day of MAY, 2003.

"OFFICIAL SEAL"
JAMES D. O'GRADY
Notary Public, State of Illinois
My Commission Expires 11-20-05

James D. O'Grady
Notary Public

This petition is executed pursuant to and in the exercise of the power and authority granted to and vested in said Trustee as trustee of Trust Number 40-4235000. Petitioner executes this instrument solely in its capacity as Trustee as aforesaid and not in its own individual capacity, and any individual liability on its part is hereby waived and released.

In Witness Whereof, said Petitioner has caused its corporate seal to be hereto affixed, and has caused its name to be signed to these presents by its Vice President and attested to by its Secretary.

THE NATIONAL BANK AND TRUST COMPANY OF SYCAMORE, ILLINOIS
as Trustee as aforesaid and not personally,

BY: James J. Dombek
James J. Dombek, Vice President

ATTEST

BY: Diane M. Florschuetz
Diane M. Florschuetz, Secretary

2003017448 A93 2003021060

STATE OF ILLINOIS)
) SS
COUNTY OF DEKALB)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that James J. Dombek and Diane M. Florschuetz, personally known to me to be the Vice President and Secretary, respectively, of THE NATIONAL BANK AND TRUST COMPANY OF SYCAMORE, ILLINOIS, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as such officers aforesaid, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority of said corporation, as their free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 2nd day of June, 2003.

Carol L. Luxton
Notary Public

"OFFICIAL SEAL"
CAROL L. LUXTON
Notary Public, State of Illinois
My Commission Expires 10/22/06

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~~2003017448~~ 2003021068

This instrument is executed by the undersigned Trustee, not personally but solely as Trustee under the terms of that certain agreement dated the 1st day of March, 1995 creating Trust No. 40-423500, and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, representations and agreements herein made are made and intended, not as personal covenants, undertakings, representations and agreements of the Trustee, individually, or for the purpose of binding it personally, but this instrument is executed and delivered by The National Bank & Trust Company of Sycamore, as Trustee, solely in the exercise of the powers conferred upon it as such Trustee under said agreement and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against The National Bank & Trust Company of Sycamore, on account hereof, or on account of any covenant, undertaking, representation, warranty or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or though or under said parties or holder hereof.

2003 0 1 7448 A05

2003 0 2 1 0 6 8

Exhibit "A"

The legal description of the subject parcel is as follows:

PART OF THE SOUTHWEST QUARTER OF SECTION 22 AND PART OF THE NORTH HALF OF SECTION 27 ALL IN TOWNSHIP 42 NORTH, RANGE 3, EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, SAID POINT BEING 1511.8 FEET NORTH OF THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 286.86 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 89 DEGREES 58 MINUTES 20 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 33.00 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST, A DISTANCE OF 482.42 FEET; THENCE SOUTH 89 DEGREES 52 MINUTES 02 SECONDS WEST, A DISTANCE OF 517.18 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 47 SECONDS EAST, A DISTANCE OF 806.40 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 72; THENCE NORTH 89 DEGREES 54 MINUTES 16 SECONDS WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 776.30 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 00 DEGREES 03 MINUTES 06 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 2609.88 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 89 DEGREES 57 MINUTES 44 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 1325.37 FEET TO THE NORTHWEST CORNER OF SAID SECTION 27; THENCE NORTH 00 DEGREES 15 MINUTES 39 SECONDS WEST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 22, A DISTANCE OF 1086.26 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE FORMER CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD (ALSO KNOWN AS SOO LINE RAILROAD); THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 1481.02 FEET ALONG AN ARC OF A CURVE TO THE RIGHT AND HAVING A RADIUS OF 5692.65 FEET, FORMING A CHORD BEARING OF SOUTH 66 DEGREES 43 MINUTES 25 SECONDS EAST TO THE END OF SAID CURVE; THENCE SOUTH 59 DEGREES 16 MINUTES 13 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1390.37 FEET TO THE BEGINNING OF A CURVE; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE 1957.25 FEET ALONG AN ARC OF A CURVE TO THE LEFT AND HAVING A RADIUS OF 5779.65 FEET FORMING A CHORD BEARING OF SOUTH 68 DEGREES 58 MINUTES, 19 SECONDS EAST TO THE END OF SAID CURVE; THENCE SOUTH 01 DEGREES 36 MINUTES 23 SECONDS WEST, A DISTANCE OF 172.41 FEET, THENCE NORTH 88 DEGREES, 32 MINUTES, 48 SECONDS WEST A DISTANCE OF 1714.50 FEET TO THE POINT OF BEGINNING.

2003021068

STATE OF ILLINOIS)
) SS.
COUNTY OF DEKALB)

CERTIFICATION

I, KATHRYN MCNEAL, do hereby certify that I am the duly elected, authorized and acting Clerk of the Village of Kirkland, County of DeKalb, State of Illinois, and that as such Clerk, I am the keeper of the records and minutes of the proceedings of the President and Board of Trustees of said Village. I do hereby certify that the foregoing Ordinance hereto attached, entitled AN ORDINANCE ANNEXING CERTAIN TERRITORY TO THE VILLAGE OF KIRKLAND, DEKALB COUNTY, ILLINOIS is a true and correct copy of an Ordinance duly passed and approved at a duly authorized and regular meeting of said President and Board of Trustees held on the 2nd day of June, 2003 at which time the Village President and 3 Trustees present voted AYE, 0 Trustee voted NAY, whereupon said Ordinance was declared duly passed and was thereupon approved by said President.

Kathryn McNeal
KATHRYN MCNEAL, VILLAGE CLERK

VILLAGE OF KIRKLAND
DE KALB CO.
ILL.
(CORPORATE SEAL)

2003 02 1068

EXHIBIT G

ORDINANCE 03-08

AN ORDINANCE AMENDING
THE ZONING MAP OF THE
VILLAGE OF KIRKLAND

ORDINANCE NO. 03-08

WHEREAS, Rood Development is the owner of certain real estate annexed into the corporate limits of the Village of Kirkland, by Ordinance No. 03-07, adopted this 2nd day of June, 2003, which property is legally described as set forth in Exhibit "A" attached hereto, and

WHEREAS, Rood Development has filed an application with the Village requesting that, upon annexation, the zoning map of the Village of Kirkland be amended to zone said real estate partially R-1, Residential, Single Family, Low Density, and partially R-4, Residential, Multi-Family

WHEREAS, a hearing was duly scheduled before the Plan Commission of the Village of Kirkland, notice of which hearing was published, within the time period required by statute, in the DeKalb Daily Chronicle, and

WHEREAS, said hearing was opened on February 27, 2003 at 7:00 p.m. in the Village of Kirkland Municipal Building, 511 West Main Street, Kirkland, Illinois, and

WHEREAS, the Village Plan Commission heard the testimony of witnesses duly sworn and considered the evidence presented by the applicants, and

WHEREAS, the Village Plan Commission has, following said public hearing, recommended that the Village Board adopt an ordinance amending the Village Zoning Map to zone the subject property, in its entirety, R-1, and

WHEREAS, Rood Development has advised the Corporate Authorities that it accepts the recommendation of the Village Plan Commission, and

WHEREAS, said real estate is the subject of an annexation agreement between Rood Development and the Village of Kirkland, approved by a two-thirds vote of the corporate authorities on May 5, 2003.

WHEREAS, the Village Board of Trustees of the Village of Kirkland, after considering the recommendations of the Planning commission has determined that it is in the best interest of the Village of Kirkland that following annexation the subject property be zoned to the R-1 District.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF KIRKLAND AS FOLLOWS:

SECTION 1. The Official Zoning Map of the Village of Kirkland, Illinois, Section 9-13-13 of the Village Code of the Village of Kirkland, as previously adopted is hereby amended to show that the subject property has been added to the Village of Kirkland and placed in the R-1, Residential, Single Family, Low Density, District.

SECTION 2. That except as set forth heretofore, the Official Zoning Map of the Village of Kirkland, Illinois, as previously adopted, and as heretofore amended, shall remain in full force and effect in all respects.

SECTION 3. That this Ordinance shall, by the authority of the Board of Trustees of the Village of Kirkland, be published in pamphlet form and that this Ordinance shall be in full force and effect upon its passage according to law.

PASSED BY THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF KIRKLAND at a regular meeting thereof held on the 2nd day of June, 2003, and approved by me as Village President on the same day.

AYES : 3

NAYS : _____

ABSENT: 3

ADOPTED 6-2-03

APPROVED 6-2-03

PUBLISHED 6-2-03

ATTEST:

VILLAGE CLERK

VILLAGE PRESIDENT

EXHIBIT H

IN THE CIRCUIT COURT OF THE 23rd JUDICIAL CIRCUIT
DeKALB COUNTY, ILLINOIS

VILLAGE OF KIRKLAND, a municipal corporation,	)	
Plaintiff,	)	
v.	)	Case No. 2019 L 33
KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC I and KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC II	)	
Defendants.	)	

AFFIDAVIT OF PAUL MADSEN

I, Paul Madsen, under oath state as follows:

1. I am the Vice President of Operations at Heritage Title Company and have extensive experience in searching title records. A true and correct copy of my resume is attached hereto as Exhibit A. In connection with this affidavit and the matters contained herein, I reviewed and analyzed online records of the DeKalb County Recorder's Office including but not limited to the documents referenced in this affidavit.

2. Part of my job duties as the Vice President of Operations at Heritage Title as well as my previous positions for the past 33 years, is ascertaining the owner of record of real property, evaluating the status of title and any matters affecting title such as, among other things, mortgages, easements, liens, declarations of covenants and so on.

3. As it pertains to this case, with respect to Lots 49, 50, 56, 57, 58, 59, 60, 61, 62, 71, 72, 73, 74, 78 and 108 in Hickory Ridge Subdivision Phase One, the owner of record of such lots as of August 18, 2020 is Kirkland Properties Holdings Company, LLC I which has been the case since January 31, 2017 when document no. 2017000771 was recorded with the DeKalb County Recorder's Office.

4. As it pertains to this case, with respect to Lots 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37 and 38 in Hickory Ridge Subdivision Phase Two, the owner of record of such lots as of August 18, 2020 is Kirkland Properties Holdings Company, LLC II which has been the case since January 31, 2017 when such document no. 2017000772 was recorded with the DeKalb County Recorder's Office.

5. With respect to title to such lots described above, Kirkland Properties Holdings Company, LLC I and Kirkland Properties Holdings Company, LLC II are the successor owners of record relative to Plank Road, LLC which was the previous owner of record of such lots by virtue of a deed recorded as document no. 2011013159 on December 11, 2011 with the DeKalb County Recorder's Office.

6. Plank Road, LLC was the successor owner of record, with respect to the land comprising such lots, to The National Bank & Trust Company of Sycamore as trustee pursuant to a Trust Agreement dated the 1st day of March, 1995 and known as Trust No. 40-423500 which was the previous owner of record of such land comprising the lots by virtue of a deed recorded as document no. 2002002739 on February 2, 2002 and re-recorded as document no. 2004002818 on February 13, 2004 with the DeKalb County Recorder's Office and which was rerecorded thereafter.

7. I can competently testify as to the statements made herein.

FURTHER, AFFIANT SAYETH NAUGHT.

Paul Madsen

Subscribed and sworn to before me
this 20 day of Aug, 2020.

Notary Public

OFFICIAL SEAL
J RAYSON
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:01/16/22

Paul E. Madsen
pmadsen@htc24x7.com
(815)-509-3754

PERMANENT:
12969 Arboretum Dr
Belvidere, IL 61008

OBJECTIVE To obtain a position in a company that demonstrates my valuable title knowledge, problem-solving, and teamwork skills

EXPERIENCE

Heritage Title Company — Crystal Lake, IL
VP of Operations — *July* 2000 - present

- Responsible for all daily activities of all team members
- Maintain relationships via telephone, email and face to face with clients, potential clients and employees
- Helped increased market share from <2% to >20% and continue to help the company grow.
- Constantly working for a better team and company with focusing on service.

Ticor Title Insurance Company — Schaumburg/Crystal Lake, IL
Escrow Closer/Construction Officer/Branch Manager — *April 1990 – July 2000*

Universal Title Services — Crystal Lake, IL
Searcher/Closing Officer — *May 1987 – April 1990*

SKILLS

Computer

Operating Systems

- Experienced in both Windows and Mac operating systems

Software

- Experienced in Microsoft Word, Excel, Outlook with Business Contact Manager, TBAM, Ramquest

EXHIBIT I

FILED FOR RECORD
DEKALB COUNTY, IL.
11 DEC -9 AM 10: 07
DEKALB COUNTY RECORDER

RHSP SURCHARGE $10.00

$153.00
5pgs

2011013159

153199

TRUSTEE'S DEED

THIS INDENTURE Made this 30th day of November, 2011 A.D., between The National Bank & Trust Company of Sycamore, of Sycamore, County of De Kalb and State of Illinois, a National Banking Association, as trustee under the provisions of a deed or deeds in trust, duly recorded and delivered to said trustee pursuant to a Trust Agreement dated the 1st day of March, 1995, and known as Trust Number 00-423500, party of the first part, and PLANK ROAD, LLC, an Illinois limited liability company, of the City of Sycamore, County of DeKalb, State of Illinois, party of the second part.

WITNESSETH, that said party of the first part, in consideration of the sum of Ten and no/100 Dollars ($10.00) and other good and valuable consideration in hand paid, does hereby grant, sell and convey unto said party of the second part, the following described real estate, situated in DeKalb County, Illinois, to-wit:

See Exhibit 1 hereto

together with the tenements and appurtenances thereunto belonging.

TO HAVE AND TO HOLD the same unto said party of the second part and to the proper use, benefit and behoof of said party of the second part forever.

EXEMPT UNDER PROVISIONS OF PARAGRAPH (I) OF
SECTION 31-45, REAL ESTATE TRANSFER TAX LAW

AMICURRENT 700761901.1 30-Nov-11 16:39

THIS DEED is executed pursuant to and in the exercise of the power and authority granted to and vested in said trustee by the terms of said deed or deeds in trust delivered to said trustee and pursuant to the trust agreement above mentioned. This deed is made subject to the lien of every deed or mortgage (if any there be) of record in said county given to secure the payment of money and remaining unreleased at the date of the delivery hereof and to all unpaid taxes and special assessments, if any and to any encumbrances and restriction of record.

IN WITNESS WHEREOF, said party of the first part as trustee has caused to be hereto affixed, and has caused his name to be signed to these presents the day and year first above written.

The National Bank & Trust Company of Sycamore, not personally but as trustee aforesaid

BY: Carolyn S. Swafford
Carolyn S. Swafford, Asst Vice President & Trust Officer

ATTEST: Stanley A. Dombek, Secretary

Exempt under provisions of Paragraph E, Section 31-45, Property Tax Code.

11/30/11 Karen Kuppe
Date Buyer, Seller or Representative

AMUCURRENT 3009761901.1 30-Nov-11 09:36

20110131159

STATE OF ILLINOIS)
) ss
COUNTY OF DE KALB)

I, Amanda Rae Brown, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Carolyn S. Swafford Asst. Trust Officer, Vice President of The National Bank & Trust Company of Sycamore and James J. Dombek, Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer & Asst. Vice President and _____ Secretary respectively, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, to be effective as of the date first set forth above, and the said _____ Secretary did also then and there acknowledge that he as custodian of the corporate seal of said Bank did affix the said corporate seal of said Bank to said instrument as his own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purpose therein set forth.

Given under my hand and notarial seal, this 30th day of November, 2011 A. D.

NOTARY PUBLIC OFFICIAL SEAL AMANDA RAE BROWN MY COMMISSION EXPIRES JULY 18, 2014

Amanda Rae Brown
_____, Notary Public

PREPARED BY:
Mayer Brown LLP
71 S. Wacker Dr.
Chicago, IL 60606

GRANTEE ADDRESS
MAIL TAXES TO
Plank Rd, LLC c/o The National Bank & Trust Co.
230 W. State St.
Sycamore, IL 60178

RETURN DEED TO
Michael P. Coghlan, attorney
The National Bank & Trust Co.
Attn: Karen Kuppler M320
230 W. State St.
Sycamore, IL 60178

AMBCURRENT 700761901.1 30-Nov-11 09:16

20110131159

Exhibit 1

Legal Description of Phases 1 & 2 of Hickory Ridge

PARCEL 1:

LOTS 12, 44, 49, 50, 56, 57, 58, 59, 60, 61, 62, 64, 67, 69, 70, 71, 72, 73, 74, 78 AND 108 IN HICKORY RIDGE PHASE ONE, A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 22, AND PART OF THE NORTH 1/2 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 3, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF KIRKLAND, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 2, 2004 IN PLAT CABINET 9, SLIDE 101-D, AS DOCUMENT NO. 2004006047 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 6, 2004 AS DOCUMENT NUMBER 2004024808, IN DEKALB COUNTY, ILLINOIS.

PARCEL 2:

LOTS 13, 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37 AND 38 IN HICKORY RIDGE PHASE TWO A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 42 NORTH, RANGE 3, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 5, 2007, AS DOCUMENT 2007000300, IN THE VILLAGE OF KIRKLAND, DEKALB COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS:

01-27-126-004 (AFFECTS LOT 12, PARCEL 1)
01-27-129-002 (AFFECTS LOT 44, PARCEL 1)
01-27-129-007 (AFFECTS LOT 49, PARCEL 1)
01-27-129-008 (AFFECTS LOT 50, PARCEL 1)
01-27-177-001 (AFFECTS LOT 56, PARCEL 1)
01-27-177-002 (AFFECTS LOT 57, PARCEL 1)
01-27-177-003 (AFFECTS LOT 58, PARCEL 1)
01-27-177-004 (AFFECTS LOT 59, PARCEL 1)
01-27-177-005 (AFFECTS LOT 60, PARCEL 1)
01-27-177-006 (AFFECTS LOT 61, PARCEL 1)
01-27-177-007 (AFFECTS LOT 62, PARCEL 1)
01-27-127-002 (AFFECTS LOT 64, PARCEL 1)
01-27-127-005 (AFFECTS LOT 67, PARCEL 1)
01-27-127-007 (AFFECTS LOT 69, PARCEL 1)
01-27-127-008 (AFFECTS LOT 70, PARCEL 1)
01-27-127-009 (AFFECTS LOT 71, PARCEL 1)

[continued]

01-27-177-008 (AFFECTS LOT 72, PARCEL 1)
01-27-177-009 (AFFECTS LOT 73, PARCEL 1)
01-27-177-010 (AFFECTS LOT 74, PARCEL 1)
01-27-177-014 (AFFECTS LOT 78, PARCEL 1)
01-27-201-001 (AFFECTS LOT 108, PARCEL 1)

01-22-376-001 (AFFECTS LOT 13, PARCEL 2)
01-22-376-004 (AFFECTS LOT 16, PARCEL 2)
01-22-376-005 (AFFECTS LOT 17, PARCEL 2)
01-22-376-006 (AFFECTS LOT 18, PARCEL 2)
01-22-376-007 (AFFECTS LOT 19, PARCEL 2)
01-22-373-001 (AFFECTS LOT 20, PARCEL 2)
01-22-373-005 (AFFECTS LOT 24, PARCEL 2)
01-22-372-001 (AFFECTS LOT 25, PARCEL 2)
01-22-372-002 (AFFECTS LOT 26, PARCEL 2)
01-22-372-003 (AFFECTS LOT 27, PARCEL 2)
01-22-372-004 (AFFECTS LOT 28, PARCEL 2)
01-22-373-006 (AFFECTS LOT 29, PARCEL 2)
01-22-373-007 (AFFECTS LOT 30, PARCEL 2)
01-22-373-009 (AFFECTS LOT 32, PARCEL 2)
01-22-373-010 (AFFECTS LOT 33, PARCEL 2)
01-22-374-001 (AFFECTS LOT 34, PARCEL 2)
01-22-374-002 (AFFECTS LOT 35, PARCEL 2)
01-22-374-003 (AFFECTS LOT 36, PARCEL 2)
01-22-374-004 (AFFECTS LOT 37, PARCEL 2)
01-22-374-005 (AFFECTS LOT 38, PARCEL 2)

COMMONLY KNOWN AS: vacant lots situated in Phases 1 and 2 of Hickory Ridge Subdivision, Kingston, Illinois

AMICURRENT 700761901.1 30-Nov-11 09:36

2011013159
A111

EXHIBIT J

LAW OFFICES
ZUKOWSKI, ROGERS, FLOOD & MCARDLE
50 VIRGINIA STREET
CRYSTAL LAKE, ILLINOIS 60014
www.zrfmlaw.com

MICHAEL J. SMORON
msmoron@zrfmlaw.com

(815) 459-2050
FAX (815) 459-9057

May 8, 2019

Via Certified Mail
Kirkland Properties Holdings LLC I
c/o Colin Anderson, its registered agent
54 W. Downer Place
Aurora, IL 60506

Re: **Hickory Ridge Subdivision – Phases 1 and 2**

Dear Mr. Anderson:

We represent the Village of Kirkland. It is our understanding that Kirkland Properties Holdings LLC I owns 15 lots in the above-referenced subdivision.

The relevant annexation agreement provides in part as follows:

Section 10. Roadways.
The Landowner shall construct all roadways required to be developed on the Subject Property. Said construction shall be completed in accordance with the Village's standards and ordinances, except that

(A) All roads constructed shall have a 66 foot right-of-way and a 24 foot paved surface centered over a 26 foot wide, 12" deep gravel bedrock surface, with ditches having a minimum depth of 18" on both sides, which shall drain to one of the areas described in Section 11. All roads shall be paved in two 1 ½" lifts. Prior to the occupancy of any building, the gravel base shall be constructed to the approved thickness. Once 50% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the first layer of the bituminous surface has been installed throughout that phase. Once 80% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the final layer of the bituminous surface has been installed throughout that phase. The Landowner shall maintain the stone base and shall seal coat the same to control dust if required by Village prior to the installation of the bituminous surface. Landowner shall be responsible for maintenance and snow removal on all roads in the subdivision until said roads are accepted by the Village. Upon the proper completion of the street construction, the Village shall promptly accept such improvements and thereafter maintain such improvements;

It also provides in part as follows:

> Section 14. Irrevocable Letter of Credit.
> In lieu of a construction bond or development bond or bonds, the Village will require an irrevocable letter of credit from a financial institution to guarantee construction and quality of all public facilities to be constructed in any stage or unit of development for which approval is sought. Said letter of credit shall be in the amount of one hundred percent (100%) of the contract costs of construction of all of the public facilities in the unit or stage or one hundred twenty five percent (125%) of Landowner engineer's contract estimate for the unit or stage as approved by the Village Engineer; and said letter of credit shall be payable to the Village.

There is no such letter of credit securing Kirkland Properties Holdings LLC I's obligations under the annexation agreement.

Demand is hereby made by the Village of Kirkland that Kirkland Properties Holdings LLC I deposit such letter of credit in the amount of $357,294.72 (15 lots/82 lots (.182) x $1,570,526.25 = $285,835.78 x 1.25). $1,570,526.25 is the amount the Village believes is necessary to complete and repair the roads in the subject development.

Sincerely,

Michael J. Smoron

MJS:cw

cc: Brad Stewart (via email)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kirkland Properties Holdings LLC I
C/o Colin Anderson, Registered Agent
54 W. Downer Place
Aurora, IL 60506

9590 9402 4914 9032 6405 36

2. Article Number (Transfer from service label)

7019 0160 0000 8964 8004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by ... of Delivery

D. Is delivery ... If YES

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☑ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ ...cted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee
$ 3.50

Extra Services & Fees (check box, add fee as appropriate)
- ☐ Return Receipt (hardcopy) $ 2.80
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$ .50

Total Postage and Fees
$ 6.80

Sent To: Kirkland Properties Holdings LLC I
Street and Apt. No., or PO Box No.: 54 W. Downer Place
City, State, ZIP+4®: Aurora IL 60506

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

CENTRAL LAKE IL 60014 MAY 2019 Postmark Here USPS

7019 0160 0000 8964 8004

LAW OFFICES
ZUKOWSKI, ROGERS, FLOOD & MCARDLE
50 VIRGINIA STREET
CRYSTAL LAKE, ILLINOIS 60014
www.zrfmlaw.com

MICHAEL J. SMORON
msmoron@zrfmlaw.com

(815) 459-2050
FAX (815) 459-9057

May 8, 2019

Via Certified Mail
Kirkland Properties Holdings LLC II
c/o Colin Anderson, its registered agent
54 W. Downer Place
Aurora, IL 60506

Re: **Hickory Ridge Subdivision – Phases 1 and 2**

Dear Mr. Anderson:

We represent the Village of Kirkland. It is our understanding that Kirkland Properties Holdings LLC II owns 19 lots in the above-referenced subdivision.

The relevant annexation agreement provides in part as follows:

Section 10. Roadways.
The Landowner shall construct all roadways required to be developed on the Subject Property. Said construction shall be completed in accordance with the Village's standards and ordinances, except that

(A) All roads constructed shall have a 66 foot right-of-way and a 24 foot paved surface centered over a 26 foot wide, 12" deep gravel bedrock surface, with ditches having a minimum depth of 18" on both sides, which shall drain to one of the areas described in Section 11. All roads shall be paved in two 1 ½" lifts. Prior to the occupancy of any building, the gravel base shall be constructed to the approved thickness. Once 50% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the first layer of the bituminous surface has been installed throughout that phase. Once 80% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the final layer of the bituminous surface has been installed throughout that phase. The Landowner shall maintain the stone base and shall seal coat the same to control dust if required by Village prior to the installation of the bituminous surface. Landowner shall be responsible for maintenance and snow removal on all roads in the subdivision until said roads are accepted by the Village. Upon the proper completion of the street construction, the Village shall promptly accept such improvements and thereafter maintain such improvements;

It also provides in part as follows:

Section 14. Irrevocable Letter of Credit.
In lieu of a construction bond or development bond or bonds, the Village will require an irrevocable letter of credit from a financial institution to guarantee construction and quality of all public facilities to be constructed in any stage or unit of development for which approval is sought. Said letter of credit shall be in the amount of one hundred percent (100%) of the contract costs of construction of all of the public facilities in the unit or stage or one hundred twenty five percent (125%) of Landowner engineer's contract estimate for the unit or stage as approved by the Village Engineer; and said letter of credit shall be payable to the Village.

There is no such letter of credit securing Kirkland Properties Holdings LLC II's obligations under the annexation agreement.

Demand is hereby made by the Village of Kirkland that Kirkland Properties Holdings LLC II deposit such letter of credit in the amount of $453,489.44 (19 lots/82 lots (.231) x $1,570,526.25 = $362,791.55 x 1.25). $1,570,526.25 is the amount the Village believes is necessary to complete and repair the roads in the subject development.

Sincerely,

Michael J. Smoron

MJS:cw

cc: Brad Stewart (via email)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kirkland Properties Holdings LLC II
c/o Colin Anderson registered agent
54 W. Downer Place
Aurora, IL 60506

9590 9402 4914 9032 6405 67

2. Article Number (Transfer from service label)

7019 0160 0000 8764 8016

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from it
If YES, enter delivery ad

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☑ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Mail Restricted Delivery
600)

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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OFFICIAL USE

Certified Mail Fee
$ 3.60

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ 2.80
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $

Postage
$ 1.50

Total Postage and Fees
$ 8.80

Sent To
Kirkland Properties Holdings LLC II
Street and Apt. No., or PO Box No.
54 W. Downer Place
City, State, ZIP+4®
Aurora IL 60506

Postmark Here

7019 0160 0000 8764 8016

PS Form 3800, April 2016 PSN 7530-02-000-047 See Reverse for Instructions

LAW OFFICES
ZUKOWSKI, ROGERS, FLOOD & MCARDLE
50 VIRGINIA STREET
CRYSTAL LAKE, ILLINOIS 60014
www.zrfmlaw.com

MICHAEL J. SMORON
msmoron@zrfmlaw.com

(815) 459-2050
FAX (815) 459-9057

February 8, 2019

Via Certified Mail
Kirkland Properties Holdings LLC I
c/o Colin Anderson, its registered agent
54 W. Downer Place
Aurora, IL 60506

Re: Hickory Ridge Subdivision – Phases 1 and 2

Dear Mr. Anderson:

We represent the Village of Kirkland. It is our understanding that Kirkland Properties Holdings LLC I owns 15 lots in the above-referenced subdivision.

The relevant annexation agreement provides in part as follows:

Section 10. Roadways.
The Landowner shall construct all roadways required to be developed on the Subject Property. Said construction shall be completed in accordance with the Village's standards and ordinances, except that

(A) All roads constructed shall have a 66 foot right-of-way and a 24 foot paved surface centered over a 26 foot wide, 12" deep gravel bedrock surface, with ditches having a minimum depth of 18" on both sides, which shall drain to one of the areas described in Section 11. All roads shall be paved in two 1 ½" lifts. Prior to the occupancy of any building, the gravel base shall be constructed to the approved thickness. Once 50% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the first layer of the bituminous surface has been installed throughout that phase. Once 80% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the final layer of the bituminous surface has been installed throughout that phase. The Landowner shall maintain the stone base and shall seal coat the same to control dust if required by Village prior to the installation of the bituminous surface. Landowner shall be responsible for maintenance and snow removal on all roads in the subdivision until said roads are accepted by the Village. Upon the proper completion of the street construction, the Village shall promptly accept such improvements and thereafter maintain such improvements;

It also provides in part as follows:

Section 14. Irrevocable Letter of Credit.
In lieu of a construction bond or development bond or bonds, the Village will require an irrevocable letter of credit from a financial institution to guarantee construction and quality of all public facilities to be constructed in any stage or unit of development for which approval is sought. Said letter of credit shall be in the amount of one hundred percent (100%) of the contract costs of construction of all of the public facilities in the unit or stage or one hundred twenty five percent (125%) of Landowner engineer's contract estimate for the unit or stage as approved by the Village Engineer; and said letter of credit shall be payable to the Village.

There is no such letter of credit securing Kirkland Properties Holdings LLC I's obligations under the annexation agreement.

Demand is hereby made by the Village of Kirkland that Kirkland Properties Holdings LLC I deposit such letter of credit in the amount of $357,294.72 (15 lots/82 lots (.182) x $1,570,526.25 = $285,835.78 x 1.25). $1,570,526.25 is the amount the Village believes is necessary to reconstruct the roads in the subject development.

Please let us know no later than February 15, 2019 as to whether such letter of credit in such amount is forthcoming. Thank you.

Sincerely,

Michael J. Smoron

MJS:cw

cc: Brad Stewart (via email)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kirkland Properties Holdings LLC I
c/o Colin Anderson, its registered agent
54 W. Downer Place
Aurora, IL 60506

9590 9402 3935 8060 1068 81

2. Article Number (Transfer from service label)
7018 2290 0001 2028 6172

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery
Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee
$ 3.50

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ 2.80
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $

Postage
$ .60

Total Postage and Fees
$ 6.80

FEB - 8 2019
Postmark Here

Sent To: Kirkland Properties Holdings LLC I
Street and Apt. No., or PO Box No.: c/o Colin Anderson, its registered agent
City, State, ZIP+4: 54 W. Downer Place, IL 60506

7018 2290 0001 2028 6172

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

LAW OFFICES
ZUKOWSKI, ROGERS, FLOOD & MCARDLE
50 VIRGINIA STREET
CRYSTAL LAKE, ILLINOIS 60014
www.zrfinlaw.com

MICHAEL J. SMORON
msmoron@zrfinlaw.com

(815) 459-2050
FAX (815) 459-9057

February 8, 2019

Via Certified Mail
Kirkland Properties Holdings LLC II
c/o Colin Anderson, its registered agent
54 W. Downer Place
Aurora, IL 60506

Re: Hickory Ridge Subdivision – Phases 1 and 2

Dear Mr. Anderson:

We represent the Village of Kirkland. It is our understanding that Kirkland Properties Holdings LLC II owns 19 lots in the above-referenced subdivision.

The relevant annexation agreement provides in part as follows:

Section 10. Roadways.
The Landowner shall construct all roadways required to be developed on the Subject Property. Said construction shall be completed in accordance with the Village's standards and ordinances, except that

(A) All roads constructed shall have a 66 foot right-of-way and a 24 foot paved surface centered over a 26 foot wide, 12" deep gravel bedrock surface, with ditches having a minimum depth of 18" on both sides, which shall drain to one of the areas described in Section 11. All roads shall be paved in two 1 ½" lifts. Prior to the occupancy of any building, the gravel base shall be constructed to the approved thickness. Once 50% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the first layer of the bituminous surface has been installed throughout that phase. Once 80% of the buildings in a particular phase are occupied, no further occupancy permits shall be issued for that phase until the final layer of the bituminous surface has been installed throughout that phase. The Landowner shall maintain the stone base and shall seal coat the same to control dust if required by Village prior to the installation of the bituminous surface. Landowner shall be responsible for maintenance and snow removal on all roads in the subdivision until said roads are accepted by the Village. Upon the proper completion of the street construction, the Village shall promptly accept such improvements and thereafter maintain such improvements;

It also provides in part as follows:

> Section 14. Irrevocable Letter of Credit.
> In lieu of a construction bond or development bond or bonds, the Village will require an irrevocable letter of credit from a financial institution to guarantee construction and quality of all public facilities to be constructed in any stage or unit of development for which approval is sought. Said letter of credit shall be in the amount of one hundred percent (100%) of the contract costs of construction of all of the public facilities in the unit or stage or one hundred twenty five percent (125%) of Landowner engineer's contract estimate for the unit or stage as approved by the Village Engineer; and said letter of credit shall be payable to the Village.

There is no such letter of credit securing Kirkland Properties Holdings LLC II's obligations under the annexation agreement.

Demand is hereby made by the Village of Kirkland that Kirkland Properties Holdings LLC II deposit such letter of credit in the amount of $453,489.44 (19 lots/82 lots (.231) x $1,570,526.25 = $362,791.55 x 1.25). $1,570,526.25 is the amount the Village believes is necessary to reconstruct the roads in the subject development.

Please let us know no later than February 15, 2019 as to whether such letter of credit in such amount is forthcoming. Thank you.

Sincerely,

Michael J. Smoron

MJS:cw

cc: Brad Stewart (via email)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kirkland Properties Holdings LLC II
c/o Colin Anderson, its registered agent
54 W. Downer Place
Aurora, IL 60506

9590 9402 3935 8060 1128 99

2. Article Number (Transfer from service label)

7018 2290 0001 2028 6165

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☑ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery
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- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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Extra Services & Fees (check box, add fee as appropriate)
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- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

$2.80

Postage
$ 1.50

Total Postage and Fees
$ 6.80

FEB - 8 2019
Postmark Here
USPS

Sent To: Kirkland Properties Holdings LLC II
Street and Apt. No., or PO Box No.: c/o Colin Anderson, its registered agent
City, State, ZIP+4®: 54 Downer Place, Aurora, IL 60506

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 2290 0001 2028 6165

File Description : Impounded document, filed

IN THE CIRCUIT COURT FOR THE TWENTY-THIRD
JUDICIAL CIRCUIT
DEKALB COUNTY, ILLINOIS

Village of Kirkland
Plaintiff(s)

vs.

Kirkland Properties et al
Defendant(s)

CASE NO. 19 L 33

FILED
DEC 07 2020
Lori Grubbs
Clerk of the Circuit Court
DeKalb County, Illinois

ORDER

Judge WALLER	Court Reporter	Plaintiff Attorney
Deputy Clerk	A copy of this order [X] should be sent to: counsel of record [MP] has been sent to:	Defendant Attorney

Plaintiff present in Open Court: ○ Yes ○ No Defendant present in Open Court: ○ Yes ○ No

Continued to:	Amount of Judgment: $
Time: Courtroom:	Amount of Costs: $
Judge:	Amount of Attorney's Fees: $
For: [ ] Motion [ ] Trial [ ] Entry of Judgment [ ] Other:	Judgment in Favor of: ○ Plaintiff ○ Defendant and against ○ Plaintiff ○ Defendant

[ ] It appearing to the Court that service has not been made on the Defendant, **IT IS ORDERED** that this cause be continued to the place and time set forth herein.

[ ] **IT IS ORDERED** that ○ Alias ○ Pluries Summons be issued and this cause be continued to the place and time set forth herein.

[ ] On the Motion of _____ **IT IS ORDERED** that this cause be continued to the place and time set forth herein.

[ ] **IT IS ORDERED** that Judgment be entered as set forth herein, in the amount indicated, together with costs.

[X] **IT IS ORDERED** that this cause be dismissed [X] with prejudice ○] without prejudice, as to:

[X] **IT IS ORDERED:** For the reasons stated on the record Defendants' Motion to Dismiss is granted

Date: 12-04-20

Enter: _____ Judge

Boxed Order
Rev. 05-16-16

IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT DEKALB COUNTY, ILLINOIS

Village of Kirkland
Plaintiff(s)

vs.

Kirkland Properties Holdings Co; et-al
Defendant(s)

Case No. 2019 L 33

FILED
IN OPEN COURT
JUN 02 2021
Lori Grubbs
Clerk of the Circuit Court
DeKalb County, Illinois

Judgment
ORDER

JUDGE	COURT REPORTER	PLAINTIFF ATTORNEY
Waller		Smoron ✓
DEPUTY CLERK.	COPY OF ORDER SENT TO.	DEFENDANT ATTORNEY
		Anderson ✓

This cause coming before the Court; all due notice having been given; the Court receiving evidence, and hearing the arguments of counsel; and being fully advised in the premises,

It is hereby ordered:

1. Judgment is entered in favor of Kirkland Properties Holdings Company, LLC I and Kirkland Properties Holdings Company, LLC II, against the Village of Kirkland, in the amount of $19,381.24.

DATED: 06-02-21

ENTERED: _____
JUDGE

Colin V. Anderson
ATTORNEY DRAFTING ORDER

Blank Order
Rev 03-13-19

FILED
12/23/2020 11:09 AM
2019L 000033
Lori Grubbs
Clerk of the Circuit Court
DeKalb County, Illinois

APPEAL TO THE SECOND DISTRICT APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF DEKALB COUNTY
TWENTY-THIRD JUDICIAL CIRCUIT

VILLAGE OF KIRKLAND, a municipal corporation, Plaintiff-Appellant, vs. KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC I and KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC II Defendants- Appellee.	Appeal from the Circuit Court of DeKalb County, Illinois Case No. 2019 L 000033 Judge Hon. Bradley J. Waller Presiding

NOTICE OF APPEAL

The Appellant-Plaintiff, the Village of Kirkland, an Illinois municipal corporation, by and through its attorneys, ZUKOWSKI, ROGERS, FLOOD & McARDLE, hereby appeals to the Appellate Court of Illinois, Second District, pursuant to Supreme Court Rules 301 and 303, from the Judgment of the Circuit Court of the Twenty-Third Judicial Circuit, DeKalb County, Illinois signed on December 4, 2020 and entered on December 7, 2020, in favor of Defendants-Appellees, and dismissing Plaintiff-Appellant's Third Amended Complaint.

VILLAGE OF KIRKLAND, Plaintiff-Appellant
By: Zukowski, Rogers, Flood & McArdle

One of its Attorneys

Michael J. Smoron, Atty. No. 06207701
Jennifer J. Gibson, Atty. No. 06273892
Attorney for Plaintiff-Appellant
ZUKOWSKI, ROGERS, FLOOD & McARDLE
50 Virginia Street, Crystal Lake, Illinois 60014
(815) 459-2050; fax-(815) 459-9057
msmoron@zrfmlaw.com; jgibson@zrfmlaw.com

APPEAL TO THE SECOND DISTRICT APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF DEKALB COUNTY
TWENTY-THIRD JUDICIAL CIRCUIT

VILLAGE OF KIRKLAND, a municipal corporation, Plaintiff-Appellant, vs.	Appeal from the Circuit Court of DeKalb County, Illinois
	Case No. 2019 L 000033
KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC I and KIRKLAND PROPERTIES HOLDINGS COMPANY, LLC II Defendants- Appellee.	Judge Hon. Bradley J. Waller Presiding

NOTICE OF APPEAL

The Appellant-Plaintiff, the Village of Kirkland, an Illinois municipal corporation, by and through its attorneys, ZUKOWSKI, ROGERS, FLOOD & McARDLE, hereby appeals to the Appellate Court of Illinois, Second District, pursuant to Supreme Court Rules 301 and 303, from the Judgment of the Circuit Court of the Twenty-Third Judicial Circuit, DeKalb County, Illinois entered on June 2, 2021, granting the Defendant-Appellee's Petition for Attorney Fees and entering a monetary judgment against Plaintiff-Appellant in the amount of $19,381.24.

VILLAGE OF KIRKLAND, Plaintiff-Appellant
By: Zukowski, Rogers, Flood & McArdle

One of its Attorneys

Michael J. Smoron, Atty. No. 06207701
Jennifer J. Gibson, Atty. No. 06273892
Attorney for Plaintiff-Appellant
ZUKOWSKI, ROGERS, FLOOD & McARDLE
50 Virginia Street, Crystal Lake, Illinois 60014
(815) 459-2050; fax-(815) 459-9057
msmoron@zrfmlaw.com; jgibson@zrfmlaw.com

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
DEKALB COUNTY, ILLINOIS

VILLAGE OF KIRKLAND
Plaintiff/Petitioner

Reviewing Court No: 2-21-0301
Circuit Court/Agency No: 2019L000033
Trial Judge/Hearing Officer: BRADLEY WALLER

v.

DIRKLAND PROPERTIES HOLDINGS COMPANY, LLC
Defendant/Respondent

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