

Revised July 9, 2003

STATE OF ILLINOIS)
) SS.
COUNTY OF KENDALL)

ORDINANCE 2003- 21

**AN ORDINANCE ESTABLISHING A BACK-UP SPECIAL
TAX SERVICE AREA NUMBER 2003-____ FOR
ROSE HILL SUBDIVISION**

BE IT ORDAINED BY THE COUNTY BOARD OF THE COUNTY OF KENDALL,
ILLINOIS, AS FOLLOWS:

SECTION 1: Authority to Establish Special Service Area.

Special Service Areas are established pursuant to Article VII, Section 7, of the Constitution
of the State of Illinois, in force July 1, 1971, which provides:

"Counties and municipalities which are not home-rule units shall have only powers granted
to them by law and the powers...(6) to levy or impose additional taxes upon areas within their
boundaries in the manner provided by law for the provision of special services to those areas
and for the payment of debt incurred in order to provide those special services."

and are established pursuant to the provisions of an Act to provide the manner of levying or
imposing taxes for the provision of special services to areas within the boundaries of home-rule
units and non-home-rule municipalities and counties and pursuant to the Revenue Act of 1939.

SECTION 2: Findings.

A. The question of the establishment of the Special Tax Service Area hereinafter

described as a Special Tax Service Area is considered by the County Board pursuant to an Ordinance entitled AEnabling Ordinance to Create Special Service Area 2003-____ for Rose Hill Subdivision, in the Township of Kendall, Kendall County, Illinois and pursuant to a waiver and consent to the imposition of a Special Tax Service Area executed by the owner of 100% interest in said subdivision, without the necessity of any public hearing, or period for objection pursuant to 35 ILCS 200/27-5 (2002).

B. The special tax shall be levied and shall be assessed as follows on all of the real property included in the special service area:

A maximum rate of (percent of assessed valuation), not to exceed \$.50 per \$100.00 of equalized assessed valuation. Said assessments may be made at any time by County Ordinance for an indefinite period of time; or for a time determined in said Ordinance after all required public hearings. At the hearing, all persons affected will be given an opportunity to be heard. The assessment made at said hearing will only be for the purpose of accomplishing extraordinary and unique repairs and maintenance as set out above in said subdivision. It is necessary to provide a back-up method to insure that monuments, signage, and landscaping, maintenance of trailways, and all related maintenance responsibilities of the Rose Hill Subdivision Homeowners Association within the common areas and trailways of the Rose Hill Subdivision, as well as any other common areas designated in the Declaration of Covenants and Restrictions dated and Final Plats of the Rose Hill Subdivision, to provide to the County of Kendall a source of funding in the event said Homeowners Association fails to maintain and repair said facilities in a safe and useable condition as is determined by the County Board of the County of Kendall. The County of Kendall shall further be reimbursed for any administrative costs incurred if any assessment is

necessary to be made. This program is necessary for public safety and is in the best interest of maintaining real property values within the Rose Hill Subdivision as described in the attached Exhibit "A".

C. Prior to the assessments being made for any part of the work done listed above, the County of Kendall shall give the persons affected advance notice of a Public Hearing as per Illinois Compiled Statutes governing Special Tax Service Areas to be held so that input may be had as to said assessment

SECTION 3: This Special Tax Services Area may run for an indefinite period of time.

SECTION 4: All Ordinances or parts of Ordinances in conflict with these provisions are repealed.

SECTION 5: This Ordinance shall become effective from and after its passage.

PASSED by the County Board of Kendall County, Illinois, this 18th day of July, A.D. 2003.

Paul Anderson
COUNTY CLERK
by Bonetta S. Mickelson Deputy

APPROVED by me, as Chairman of the County Board of Kendall County, Illinois, this 18 day of July, A.D. 2003.

Nancy J. Hunt, Vice Chair
CHAIRMAN

Prepared by:
Law Offices of Daniel J. Kramer
1107A S. Bridge Street
Yorkville, Illinois 60560
630.553.9500

Revised July 9, 2003
Revised July 16, 2003

STATE OF ILLINOIS)
) ss
COUNTY OF KENDALL)

PLANNED UNIT DEVELOPMENT AGREEMENT
ROSE HILL SUBDIVISION

This Planned Unit Agreement (hereinafter referred to as "AGREEMENT"), is made and entered into this 18th day of July, 2003, by and between the COUNTY OF KENDALL (hereinafter referred to as "KENDALL") a body politic, and PROPERTY CONCEPTS, INC., an Illinois Corporation, as Beneficiary of The Old Second National Bank of Aurora Trust #8775 (hereinafter referred to as "OWNER/DEVELOPER"),

WITNESSETH

WHEREAS, OWNER/DEVELOPER owns fee simple title to the real property which is legally described in Exhibit "A" attached hereto, consisting of approximately 97.6 acres, more or less (hereinafter referred to as "PROPERTY"); and OWNER/DEVELOPER intends to complete the development of the PROPERTY as a high quality single-family rural residential subdivision which contains certain open space areas which will be protected by a Conservation Easement; and

WHEREAS, it is the desire of OWNER/DEVELOPER to develop the subject PROPERTY in KENDALL in accordance with the terms of this AGREEMENT and the ordinances of KENDALL; and

WHEREAS, KENDALL through its Planning, Building and Zoning Committee of the County Board previously recommended the Property be zoned RPD-2 Residential Planned Development - Two; and it is the desire of all parties to facilitate its development pursuant to the terms and conditions of this AGREEMENT and the Ordinances of KENDALL; and

WHEREAS, OWNER/DEVELOPER and KENDALL have or will perform and execute all acts required by law to effectuate such development; and

WHEREAS, the parties to this AGREEMENT wish to amend the zoning classification pursuant to the RPD-2 Residential Planned Development - Two, and have held the required Public Hearing for approval of its zoning classification, Preliminary Plan and Engineering pursuant to the procedures set out in the RPD-2 Residential Planned Development - Two as contained in the County of Kendall Zoning Ordinance; and

WHEREAS, all notices required by law relating to the re-zoning and Planned Unit Development process pursuant to the RPD-2 Residential Planned Development - Two have been given for the Property to the persons or entities entitled thereto, pursuant to the applicable provisions of the Illinois Compiled Statutes and County Ordinances, and

WHEREAS, the County Board of Kendall has duly affixed the time for consideration of this AGREEMENT; and

WHEREAS, in reliance upon the development of the PROPERTY in the manner proposed, OWNER/DEVELOPER, and KENDALL have executed all Petitions and other documents that are necessary to accomplish the re-zoning and platting of the PROPERTY in KENDALL; and

WHEREAS, it is the desire of KENDALL and OWNER/DEVELOPER that the development of the PROPERTY proceed, subject to the ordinances, codes and regulations of KENDALL as amended; and

WHEREAS, in accordance with the powers granted to KENDALL by the provisions of the County Zoning Ordinance, inclusive, relating to its act and the Kendall County Zoning Ordinance for Planned Unit Developments, and the parties hereto wish to enter into a binding agreement with respect to the PROPERTY and to provide for various other matters related directly or indirectly to the zoning and development of the PROPERTY, as authorized by, the provisions of said statutes:

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions herein contained, and by authority of and in accordance with the aforesaid statutes of the State of Illinois, the parties agree as follows:

1. ZONING.
 - A. Contemporaneously with the approval of this AGREEMENT, KENDALL shall adopt an Ordinance amending the Zoning Map of the County to Zone the subject PROPERTY which shall be classified to zone the subject property RPD-2 Residential Planned Development - Two in terms of performance standards and as a Planned Unit Development. This will be a Zoning Map change only and not a text amendment.

- B. Further the County of Kendall agrees to approve the Concept Plan and Final Plat of Subdivision of Development which is made a part hereof; and which shall be developed with a maximum of fifty-seven (57) Single Family Lots in general conformance with Exhibit "B" incorporated herein by reference; dated July 18, 2002; and in conformance with the Landscape Plan prepared by Ives/Ryan Group, Inc. which is dated _____ and which is incorporated herein as Exhibit "C".
- C. KENDALL and OWNER/DEVELOPER agree that the PROPERTY shall be developed in substantial compliance with the ordinances of KENDALL, and this AGREEMENT, together with the Drawings and Exhibits attached hereto.
- D. KENDALL agrees to allow OWNER/DEVELOPER to release storm water from the development's storm water management system in conformance with the Kendall County Storm Water Run-Off Ordinance, and in conformance with the Engineering Plans prepared by Western Engineering, P.C. which is dated _____, and approved by the Drainage Consulting Engineer of Kendall County, Strand Associates, Inc.

2. FEES.

OWNER/DEVELOPER, upon submission of a request for approval of a Final Plat for each Phase or Unit of the Subdivision, agrees to post a Bond or Letter of Credit securing all Land-Cash Fees as required by County Ordinances. The County School and Park Land-Cash Fees shall be payable in accordance with the ordinances existing in KENDALL at the time of approval of this AGREEMENT as to formula, but shall be collected and paid by the Applicant for each single family building permit at the time of application for each respective building permit.

3. DONATIONS AND CONTRIBUTIONS.

- A. OWNER/DEVELOPER agrees to dedicate forty (40) feet of right-of-way on the west side of Minkler Road from the existing centerline of Minkler Road across the boundary of the PROPERTY to provide for the future expansion of said roadway by the Oswego and Kendall Township Highway Commissioners.
- B. OWNER/DEVELOPER agrees to dedicate forty (40) feet of right-of-way on the north side of Hilltop Drive from the existing centerline of Hilltop Drive across the boundary of the PROPERTY to provide for the further expansion of said roadway by the Kendall Township Highway Commissioner.
 - (i) OWNER/DEVELOPER has been requested by the Kendall County Highway Department to overlay with blacktop from Route 71 easterly to the entrance of Rose Hill Subdivision, which has been agreed to by

OWNER/DEVELOPER.

- (ii) OWNER/DEVELOPER and KENDALL agree that when, and if, the adjoining real property on the south side of Hilltop Road is developed KENDALL shall require the Developer thereof to reimburse OWNER/DEVELOPER for one-half (1/2) of the cost of said improvement, plus interest at the rate of five percent (5%) per annum from the date of completion of said roadway improvement.
- C.
- (i) OWNER/DEVELOPER shall execute and record simultaneously with the Final Plat of Subdivision for Rose Hill Subdivision, a "Conservation Easement", which is attached hereto and incorporated herein as Exhibit "D", after said easement is approved by KENDALL and its, Kendall County Zoning & Platting Officer, and OWNER/DEVELOPER, as to the conservation area in the perimeter portion of the PROPERTY in a format acceptable to the Kendall County Plat Officer, Kendall County States Attorney, and OWNER/DEVELOPER, providing the terms and conditions of said Conservation Easement; as well as naming KENDALL as the enforcement agency, pursuant to Illinois Compiled Statutes.
 - (ii) As to the area of the open space area as shown on the Final Plan and Landscape Plan hereby impressed with the Conservation Easement. A trail and all other required improvements or structures as set out in the Landscape Plan (Exhibit "C") and Final Engineering Plan shall be installed at the expense of OWNER/DEVELOPER.
 - (iv) OWNER/DEVELOPER agrees to establish an Illinois Not-for-Profit Corporation to operate a Homeowners' Association which shall provide for the maintenance of the common areas of the subdivision, including trail system, subdivision signage, landscaping, and related structures. OWNER/DEVELOPER shall further require that all lots contained in the subdivision shall be required to contribute on a per lot basis to the maintenance of the subdivision common areas and common improvement obligations outlined above by the Covenants and Restrictions of said subdivision which shall be recorded simultaneously with the Final Plat of Subdivision.
 - (v) A Consent to the creation of a Back-Up Special Service Tax Area to provide for the maintenance of all common areas shall be executed by the Kendall County Board and OWNER/DEVELOPER; and recorded as to the entire subdivision at the time of recording the Final Plat of Subdivision, binding the OWNER/DEVELOPER and all assigns for payment of the above maintenance costs in the event the OWNER/DEVELOPER and

Homeowners' Association fail to provide for said maintenance.

4. SUBDIVISION IMPROVEMENTS.

A. Set back requirements shall be in conformance with the RPD-2 Zoning Classification of the Kendall County Zoning Ordinance.

B. OWNER/DEVELOPER shall be permitted a waiver of the width to depth requirements in relation to Lots as shown on the Preliminary Plan of said subdivision and the configuration of all lots as shown on the Final Plat of Subdivision is hereby approved.

C. i) Each lot shall be served by a private water well and private sewage disposal system. Where a mechanical sewage disposal system is required, the owner of said unit shall have in full force and effect at all times a service and maintenance agreement as established and required by the subdivision covenants, conditions and restrictions.

ii) With Respect to individual septic system design and installation, DEVELOPER agrees to create and file with the Kendall County Planning, Building, and Zoning Office, Kendall County Health Department, and Kendall County Consulting Engineers a Septic Overlay Plan designed by EDS prior to recording of the Final plat of Subdivision. Said Septic Overlay plan shall show potential septic sites on each lot, and under-drain discharge areas in open space adjacent to each lot.

iii) With respect to the design and construction of each individual Lot Septic System, the Owner or Builder shall comply with the Following terms prior to applying for a building permit with the Kendall County Planning, Building, and Zoning Office:

Septic Systems- Each Purchaser of a lot shall provide, at the same time of Application for a septic permit, a septic plan design for review by the Developer and approved by the Kendall County Health Department. Said design shall be prepared by a qualified septic designer which shall provide for the location of the primary septic field and the identification of a back-up septic field. Said design shall include installation of an under-drain or curtain-drain system in the event the designer or the Kendall County Health Department concurs that it is necessary to lower the groundwater table on any particular lot.

iv) In the event it is necessary to construct a groundwater under-drain for joint use by more than one Lot which discharge to open space area, said under-drain shall be installed by Owner/Developer.

- D. The existing tree line shall be preserved and maintained by OWNER/DEVELOPER and by the Homeowners' Association as to the adjoining owners to the North and West of the PROPERTY.
- E. No lot shall be permitted to be re-subdivided so long as the subject real property remains in unincorporated Kendall County.
- F. Due to the sensitive nature of development on the subject site, OWNER/DEVELOPER and KENDALL agree that prior to commencement of construction on each respective lot in said subdivision, accompanying an application for building permit shall be a proposed site drainage, and soil erosion control plan which shall first be approved in writing by OWNER/DEVELOPER and reviewed by the County Zoning Director and/or consultants of the County and approved together with the building permit application.
- G. Owner/Developer is hereby granted a Variance or deviation from the Stormwater Ordinance allowing the pond depth at the highwater elevation for the middle basin to be 4.24 feet; and the pond depth at the highwater elevation for the north basin at 4.59 feet, instead of the maximum Ordinance depth of 4.00 feet as recommended by Strand Associates, Inc., the Kendall County Consulting Drainage Engineer.

5. SIGNAGE.

OWNER/DEVELOPER shall be permitted to have the following on-site marketing signage until the final lot of said subdivision is sold:

- A. Hilltop Road Entrance (8' x 12' - double faced)
- B. Minkler Road (8' x 10' - double faced)
- C. Interior Entry Drive (4' x 8')
- D. Clubhouse Drive (4' x 8')

6. TIME IS OF THE ESSENCE.

It is understood and agreed by the parties hereto that time is of the essence in this AGREEMENT, and that all parties will make every reasonable effort, to expedite the subject matter hereof. It is further understood and agreed by the parties that the successful consummation of this AGREEMENT requires their continued cooperation.

7. BINDING EFFECT.

This Planned Unit Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns including, but not limited to, successor owners of record, successor developers, and upon any successor County authority of KENDALL. In the event any portion of this AGREEMENT is deemed unenforceable by a Court of competent jurisdiction the remaining portion shall be binding upon all parties.

8. NOTICES AND REMEDIES.

Upon a breach of this AGREEMENT, any of the parties in any court of competent jurisdiction, by any action or proceeding at law or in equity, may exercise any remedy available at law or equity.

Before any failure of any party of this AGREEMENT to perform its obligations under this AGREEMENT shall be deemed to be a breach of this AGREEMENT, the party claiming such failure shall notify in writing, certified mail/return receipt requested, the party alleged to have failed to perform, state the obligation allegedly not performed and the performance demanded.

Notice shall be provided at the following addresses:

KENDALL:

Kendall County Zoning Director
c/o Kendall County Zoning Office
111 W. Fox St.
Yorkville, Illinois 60560

Copy to Kendall County
States Attorney:

Kendall County States Attorney
807 W. John St.
Yorkville, Illinois 60560

OWNER/DEVELOPER:

Property Concepts, Inc.
2679 Route 34
Oswego, Illinois 60543
Attn: Angelo Kleronomos

Attorney for
OWNER/DEVELOPER:

Law Offices of Daniel J. Kramer
1107A S. Bridge Street
Yorkville, Illinois 60560

9. AGREEMENT TO PREVAIL OVER ORDINANCES.

In the event of any conflict between this AGREEMENT and any ordinances of KENDALL in force at the time of execution of this AGREEMENT or enacted during the pendency of this AGREEMENT, the provision of this AGREEMENT shall prevail to the extent of any such conflict or inconsistency.

10. PARTIAL INVALIDITY OF AGREEMENT.

If any provision of this AGREEMENT (except those provisions relating to the requested rezoning of the Property identified herein and the ordinances adopted in connection herewith), or its application to any person, entity, or property is held invalid, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect the application or validity of any, other terms, conditions and provisions of this AGREEMENT and, to that end, any terms, conditions and provisions of this AGREEMENT are declared to be severable.

If, for any reason during the term of this AGREEMENT, any approval or permission granted hereunder regarding plans or plats of subdivision or zoning is declared invalid, KENDALL agrees to take whatever action is necessary to reconfirm such plans and zoning ordinances effectuating the zoning, variations and plat approvals proposed herein.

11. USE OF PROPERTY FOR FARMING.

Any portion of the PROPERTY, which is not conveyed or under development as provided herein, may be used for farming purposes, regardless of the underlying zoning until developed.

12. PROPERTY CONCEPTS, INC., an Illinois Corporation, as Beneficiary of The Old Second National Bank of Aurora Trust #8775 hereby discloses that it is the sole OWNER of the subject real property.

IN WITNESS WHEREOF, the parties have executed this Planned Unit Agreement the day and year first above written.

KENDALL:
COUNTY OF KENDALL

By: Nancy J. Trumb, Vice Chair Dated: 7-18-03
County Board Chairman

Attest: Paul Anderson
County Clerk
by Bonnetta S. Mickelson
Deputy

OWNER/DEVELOPER:
PROPERTY CONCEPTS, INC.,
an Illinois Corporation, as Beneficiary
of The Old Second National Bank of
Aurora Trust #8775

By: _____ Dated: _____

Attest: _____

Prepared by & Return to:
Law Offices of Daniel J. Kramer
1107A S. Bridge Street
Yorkville, Illinois 60560
630.553.9500

EXHIBIT LIST

- Exhibit AA” - Legal description
- Exhibit AB” - Preliminary and Final Plat of Subdivision
- Exhibit AC” - Landscape Plan
- Exhibit AD” - Conservation Easement

IN WITNESS WHEREOF, the parties have executed this Planned Unit Agreement the day and year first above written.

KENDALL:
COUNTY OF KENDALL

By: _____
County Board Chairman

Dated: _____

Attest: _____
County Clerk

DEVELOPER:
PROPERTY CONCEPTS, INC.,
an Illinois Corporation, as Beneficiary
of The Old Second National Bank of
Aurora Trust #8775

By: Sub C Klum

Dated: July 21, 2003

Attest: Wm. J. Brodick

OWNER:
OLD SECOND NATIONAL BANK OF AURORA TRUST #8775

By: Michael J. Meacham
Trust Officer

Dated: July 22, 2003

Attest: Janet S. Dee
TRUST OFFICER

Prepared by & Return to:
Law Offices of Daniel J. Kramer
1107A S. Bridge Street
Yorkville, Illinois 60560
630.553.9500

This instrument is executed by THE OLD SECOND NATIONAL BANK of Aurora, Illinois, not personally but solely as Trustee, as aforesaid. All the covenants and conditions to be performed hereunder by THE OLD SECOND NATIONAL BANK are undertaken by it solely as Trustee, as aforesaid and not individually, and no personal liability shall be asserted or be enforceable against THE OLD SECOND NATIONAL BANK by reason of any of the the covenants, statements or representations contained in the instrument.

Revised July 2, 2003

STATE OF ILLINOIS)
)ss.
COUNTY OF KENDALL)



**GRANT OF CONSERVATION EASEMENT
FROM PROPERTY CONCEPTS, INC. TO THE
ROSE HILL SUBDIVISION HOMEOWNERS' ASSOCIATION,
An Illinois Not-For-Profit Corporation
(ROSE HILL SUBDIVISION)**

This Grant of Conservation Easement is made this 18th day of July, 2003, by PROPERTY CONCEPTS, INC., an Illinois Corporation, as Beneficiary of The Old Second National Bank of Aurora Trust #8775; record title owner as "OWNER/DEVELOPER", hereinafter referred to as "GRANTOR", in favor of the ROSE HILL SUBDIVISION HOMEOWNERS' ASSOCIATION, an Illinois Not-For-Profit Corporation, hereinafter referred to as "GRANTEE".

WHEREAS, the GRANTOR is the sole owner of fee simple certain real property in Kendall County, Illinois, more particularly described in Exhibit "A" attached hereto and incorporated by this reference ("PROPERTY"); and

WHEREAS, the conservation values of the PROPERTY have been determined by the GRANTEE; and

WHEREAS, the GRANTOR further intends, as owner of the PROPERTY, to convey to GRANTEE the right to preserve the conservation values and to enforce the maintenance of the areas subject to the conservation easement according to the approved Landscape Plan of Ives/Ryan Group, Inc. dated _____ which is incorporated herein by reference; and further to police the prohibition of activities on the areas subject to this Conservation Easement which would conflict with or be in violation of the terms thereof of the PROPERTY in perpetuity; and

WHEREAS, GRANTEE is a not-for-profit organization, whose primary purpose is maintenance of all of the subdivision open space/common areas as well as the preservation, protection and enhancement of property in its natural condition; and

WHEREAS, GRANTEE intends by accepting this Grant to honor the intentions of the GRANTOR stated herein, and thereby endeavor to preserve and protect the conservation values of the PROPERTY.

NOW, THEREFORE the GRANTOR, for and in consideration of One Dollar (\$1.00) to the GRANTEE in hand paid, the receipt of this is hereby acknowledged, and in further consideration of the facts above recited and of the mutual covenants, terms, considerations, and restrictions contained herein, and pursuant to the laws of Illinois, GRANTOR hereby voluntarily grants and conveys to GRANTEE a Conservation Easement over the PROPERTY as depicted in the Final Plat of Rose Hill Subdivision which is attached as Exhibit "B" of the nature and character and to the extent hereinafter set forth ("EASEMENT").

1. Purpose. It is the purpose of this EASEMENT to assure that the PROPERTY will be developed to a condition set out in the Ives/Ryan Group, Inc. Landscape Plan incorporated herein by reference and, retained forever in this condition and prevent any use of the PROPERTY that will significantly impair or interfere with the conservation values of the PROPERTY or the purpose for which this EASEMENT is being granted. GRANTOR intends that this EASEMENT will confine the use of the PROPERTY to such activities as are consistent with the purpose of this EASEMENT.
2. Rights of Grantee. To accomplish the purpose of this EASEMENT, the following rights are conveyed to the GRANTEE by this EASEMENT:
 - A. To preserve and protect the conservation values and conformance with the approved Ives/Ryan Group, Inc. Landscape Plan of the PROPERTY;
 - B. To enter upon the PROPERTY at any reasonable time in order to monitor GRANTOR's compliance with and otherwise enforce the terms of this EASEMENT; provided that such entry shall be upon prior reasonable notice to GRANTOR, and GRANTEE shall not unreasonably interfere with the GRANTOR's use of the PROPERTY for open space, or access to the conservation areas for walking and passive use by the residents of Rose Hill Subdivision;
 - C. To prevent any activity on or use of the PROPERTY that is inconsistent with the purpose of this EASEMENT and to require the restoration of such areas or features of the PROPERTY that may be damaged by any inconsistent activity of use in conformance with the Ives/Ryan Group, Inc. Landscape Plan;
 - D. To conduct controlled burns and other management activities that will improve and maintain the natural condition of the PROPERTY. GRANTEE will provide notification to GRANTOR prior to these activities.

3. Acts Beyond Control of Grantee. Neither GRANTOR nor GRANTEE shall be held responsible for injury to or change in the PROPERTY resulting from causes beyond its control, including, without limitation, fire, flood, storm, and earth moving, or any prudent action taken by it or GRANTOR or any governmental agency under emergency conditions to prevent, abate, or mitigate significant injury to the PROPERTY or resulting from such causes or arising out of the criminal acts or malicious mischief of trespassers or the visiting public or arising out of any taking of the PROPERTY or any part thereof by any government or governmental agency or utility under powers of eminent domain.
4. Prohibited Actions and Uses. Any activity on or use of the PROPERTY inconsistent with the purpose of this EASEMENT is prohibited, except as specifically approved by the GRANTEE, including, but not limited to: erection of structures, sheds or fences; paving; excavating; construction of dams or structures that interfere with the flow of water; earth movement beyond the control of Grantor; filling; dumping of waste or other material; and cutting or damaging of live trees in excess of six (6) inches in circumference measured three (3) feet above ground or other vegetation except for controlled burns, landscape maintenance, and removal of noxious weeds brush and dead trees in the north tree line of the subject property.
5. Reserved Rights. Grantor reserves to itself, and to its representatives, successors, and assigns, all rights accruing from its ownership of the PROPERTY, including the right to engage in or permit or invite others to engage in all uses of the PROPERTY that are not expressly prohibited herein and are consistent with the purpose of this EASEMENT. The GRANTOR reserves the right to remove live trees that measure under six (6) inches in circumference measured three (3) feet above ground level without approval of GRANTEE, and to remove dead trees, underbrush, or noxious plants as defined in Illinois Compiled Statutes. In the event additional areas are needed for septic absorption fields, GRANTOR may permit by written agreement the extension of septic absorption field lines into areas of the development impressed with this Conservation Easement so long as GRANTOR is satisfied said extensions shall not interfere with the intent and purpose of this EASEMENT.
6. Notice of Intention to Undertake Permitted Action. GRANTOR, prior to removing trees as set out in paragraph 4 above, or taking any action that will alter the condition of the PROPERTY, shall notify GRANTEE in writing not less than twenty (20) days prior to such proposed activity. Such notice shall not give the GRANTOR permission to undertake any action by this EASEMENT without the specific approval of GRANTEE.
- 6.1 Grantee's Approval. Where GRANTEE's approval is required, as set forth in paragraph six (6), GRANTEE shall grant or withhold approval in writing within thirty (30) days of receipt of GRANTOR's written request thereof. GRANTEE's approval may be withheld only upon a reasonable determination by GRANTEE that the action as proposed would be inconsistent with the purpose of the EASEMENT.

7. Grantee's Remedies. If GRANTEE determines that any person or entity is in violation of the terms of this EASEMENT or that a violation is threatened, GRANTEE shall give written notice to such person or entity of such violation and demand that corrective action sufficient to cure the violation and, where the violation involves injury to the PROPERTY resulting from any use or activity inconsistent with the purpose of this EASEMENT, to restore the portion of the PROPERTY so injured. If violator fails to cure the violation within a thirty (30) day period, or fails to begin curing such violation within a thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, GRANTEE may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this EASEMENT, to enjoin, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this EASEMENT or injury to any conservation values protected by this EASEMENT, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the PROPERTY to the condition that existed prior to any such injury. Without limiting the violator's liability therefore, GRANTEE, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the PROPERTY. If GRANTEE, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the PROPERTY, GRANTEE may pursue its remedies under this paragraph without prior notice to the violator or without waiting for the period provided for the cure to expire.
- 7.1 Cost of Enforcement. Any cost incurred by the GRANTEE in enforcing the terms of this EASEMENT against a person or entity found in violation by a court of competent jurisdiction, including, without limitation, cost of suit and attorneys' fees, and any cost of restoration necessitated by that person or entity's violation of the terms of this EASEMENT shall be borne by the violator. If GRANTOR prevails in any action to enforce the terms of this EASEMENT, GRANTOR's cost of suit, including, without limitation, attorneys' fees, shall be borne by any person or entity found in violation hereof.
- 7.2 Grantee's Discretion. Enforcement of the terms of this EASEMENT by GRANTEE shall be at the discretion of GRANTEE, and any forbearance by GRANTEE to exercise its rights under this EASEMENT shall not be deemed or construed to be a waiver by GRANTEE of such terms or of any subsequent breach of the same or any other term of this EASEMENT or of any of GRANTEE's rights under this EASEMENT. No delay or omission by GRANTEE in the exercise of any right or remedy upon any breach by any person or entity shall impair such right or remedy or be construed as a waiver.
- 7.3 Acts Beyond Grantor's Control. Nothing contained in this EASEMENT shall be construed to entitle GRANTEE to bring any action against GRANTOR for any injury to or change in the PROPERTY resulting from causes beyond GRANTOR's control, including, without limitation, fire, flood, storm, or earth movement, or acts of third parties not permitted by GRANTOR; or from any prudent action taken by GRANTOR or

any governmental agency under emergency conditions to prevent, abate, or mitigate significant injury to the PROPERTY or resulting from such causes or arising out of any taking of the PROPERTY or any part thereof by any government or governmental agency or utility under powers of eminent domain. Upon sale of all lots by GRANTOR or upon sale of any specific Lot, GRANTOR shall not be held liable for acts of any new owner or their agents, employees, or licensees only upon written consent of GRANTOR or its successor owner.

- 7.4 It shall not be considered as a violation of this EASEMENT for GRANTOR to create a trail within conservation areas as depicted on the Final Landscape Plan and Preliminary Plat of Subdivision to install drains, sanitary sewer mains, or other public utilities across conservation areas in conformance with Final Engineering Plans, or the repair or replacement of these utilities after installation.
8. Access. No right of public access by the general public is being granted to any portion of the PROPERTY as conveyed by this EASEMENT except the trail system which may be used by persons using the trail systems to which it connects;
9. Cost and Liabilities. GRANTOR or the Rose Hill Homeowner's Association as successor owner retains all responsibility and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, maintenance of the PROPERTY.
- 9.1 Taxes. GRANTOR shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied or assessed against the PROPERTY by competent authority, excluding any taxes imposed upon, or incurred as a result of this EASEMENT.
10. Extinguishment. If circumstances arise in the future which render the purpose of this EASEMENT impossible to accomplish, this EASEMENT can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction; or with the written consent of GRANTOR, or its successor owner and GRANTEE.
11. Assignment. This EASEMENT is transferable, but GRANTEE may assign its rights and obligation under this EASEMENT only to an organization or agency that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulation promulgated thereunder, and authorized to acquire and hold conservation easements under the Real Property Conservation Rights Act (765 ILCS 120) 2000 or any successor Act or provision then applicable. As a condition of such transfer, GRANTEE shall require that the conservation purposes of this EASEMENT are intended to be carried out and that its terms and provisions are binding upon the assignee and each subsequent assignee.

12. Amendment. If circumstances arise under which an amendment to or modification of this EASEMENT would be appropriate, GRANTOR and GRANTEE are free to jointly amend this EASEMENT; provided that no amendment shall be allowed that will affect the qualifications of this EASEMENT or the status of GRANTEE under any applicable laws or Section 170(h) of the internal Revenue Code of 1986, as amended, and any amendment shall be consistent with the purpose of this EASEMENT, and shall not affect its perpetual duration. Any amendment shall be recorded in the Office of Recorder of the Deeds of Kendall County, Illinois, after review and approval by the Kendall County Planning, Building & Zoning Staff.
13. Recordation. GRANTEE shall record this instrument in timely fashion in the Office of Recorder of the Deeds of Kendall County, Illinois, and may re-record it at any time as may be required to preserve its rights in this EASEMENT.
14. General Provisions.
 - A. Controlling Law. The interpretation and performance of this EASEMENT shall be governed by the laws of the State of Illinois.
 - B. Liberal Construction. Any general rule of construction to contrary notwithstanding, this EASEMENT shall be liberally construed in favor of the purpose of this EASEMENT and to the policy and purpose of the Real Property Conservation Rights Act (765 ILCS 120) 2000. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this EASEMENT that would render the provision valid shall prevail over any interpretation that would render it invalid.
 - C. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the EASEMENT and supercedes all prior discussions, understandings, and agreements relating to this EASEMENT. No alteration or variations of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 12.
 - D. No Forfeiture. No violation or default in the obligation of this EASEMENT will result in a forfeiture or reversion of GRANTEE's title in any respect.
 - E. Successors. The covenants, terms, conditions, and restrictions of this EASEMENT shall be binding upon, and inure to the benefits of the parties hereto and their respective personal representative, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the PROPERTY.

- F. Termination of Rights and Obligations. A party's rights and obligations under this EASEMENT terminate upon transfer of the party's interest in the EASEMENT or PROPERTY, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- G. No action for enforcement termination or modification of said Conservation Easement shall be maintained or undertaken by Kendall County or successor government agency without prior written notice to OWNER/DEVELOPER and the Rose Hill Homeowners' Association.

To have and to hold unto GRANTEE, its successors, and assigns forever.

IN WITNESS WHEREOF, GRANTOR and GRANTEE have set their hands on the day and year first written above.

GRANTOR:
 PROPERTY CONCEPTS, INC.,
 and Illinois Corporation, as Beneficiary
 of The Old Second National Bank of
 Aurora Trust #8775

GRANTEE:
 ROSE HILL HOMEOWNERS'
 ASSOCIATION, an Illinois Not-for-Profit
 Corporation

By: _____

By: _____

Attest: _____

Attest: _____

Prepared by:
 Law Offices of Daniel J. Kramer
 1107A S. Bridge Street
 Yorkville, Illinois 60560
 630.553.9500

Revised July 9, 2003

STATE OF ILLINOIS)
) SS.
COUNTY OF KENDALL)

RECAPTURE AGREEMENT

THIS RECAPTURE AGREEMENT ("AGREEMENT"), is made and entered as of the 18th day of July, 2003, by and between the COUNTY OF KENDALL, an Illinois County ("COUNTY") and PROPERTY CONCEPTS, INC., an Illinois Corporation ("DEVELOPER").

RECITALS

A. DEVELOPER is the OWNER and DEVELOPER of that certain real estate development located within the County of Kendall and commonly known as Rose Hill Subdivision ("Subdivision").

B. DEVELOPER and the COUNTY have heretofore entered into that certain Planned Unit Development Agreement dated July 18, 2003 ("PUD Agreement") pertaining to the development of the Subdivision within the COUNTY.

C. DEVELOPER desires to recapture an allocable share one-half (1/2) of the costs of constructing certain of the public improvements for the Subdivision ("Recapture Items") which will provide benefit to other properties ("Benefitted Properties") from the Owners of the Benefitted Properties ("Benefitted Owners").

D. DEVELOPER and the COUNTY are desirous of entering into this Agreement to provide for the fair and allocable recapture by DEVELOPER of the proportionate costs of the Recapture Items from the Benefitted Owners, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. **RECAPTURE ITEMS.** The Recapture Items, being elements of the public improvements to be constructed as a part of the development of the Subdivision, are identified in Exhibit "A" attached hereto ("Recapture Schedule"). The Recapture Schedule identifies each Recapture Item and the estimated cost to construct each Recapture Item ("Estimated Cost"). DEVELOPER shall cause each of the Recapture Items to be constructed in compliance with the provisions of the PUD Agreement consisting of the overlay of the surface of Hilltop Road from its intersection with Illinois Route 71 easterly to the east side of the main entrance to DEVELOPER's subject development, Rose Hill Subdivision.

2. **BENEFITTED PROPERTIES.** The Benefited Properties are legally described in the Recapture Schedule attached hereto as Exhibit "B". Each parcel of real estate contained within the Benefited Properties is referred to herein individually as a "Benefited Parcel".

3. **RECAPTURE COSTS.** The Recapture Item(s) which the COUNTY has determined will benefit a Benefited Parcel, and the prorate share of the Estimated Cost of each such Recapture Item to be allocated to such Benefited Parcel are set forth in the Recapture Schedule. The aggregate amount of the proportionate share of the Estimated Cost for each of the Recapture Items allocable to a Benefited Parcel is referred to herein as the "Recapture Costs". The Recapture Costs for each of the Benefited Parcels shall be as identified in the Recapture Schedule. Interest shall accrue on the Recapture Costs for the benefit of DEVELOPER at the rate of five percent (5%) per annum from the date the Recapture Item is completed by DEVELOPER until the Recapture Cost is paid. All references to Recapture Costs herein shall include accrued interest owed thereon.

4. **COLLECTION OF RECAPTURE COSTS.** The COUNTY shall assess against and collect from the Benefited Owner of a Benefited Parcel, or any portion thereof, his successors and assigns, the Recapture Cost, calculated under Paragraph 3 of this Agreement for such Benefited Parcel. At such time as a Benefited Owner, or its agent or representative subdivides a Benefited Parcel by recording a Final Plat, or any portion thereof, or subdivides the Benefited Parcel from a larger parcel of land, or applies to the COUNTY for issuance of a permit for connection to said Hilltop Road, the COUNTY shall collect from such Benefited Owner, or its agent or representative, the applicable Recapture Costs, owed hereunder by such Benefited Parcel. No Benefited Parcel which is a part of a subdivision (whether by plat or division by deed) shall be approved or recognized by the COUNTY until such Benefited Parcel has fully paid the applicable Recapture Costs, owed by such Benefited Parcel under this Agreement.

5. **PAYMENT OF RECAPTURE COSTS.** Any Recapture Costs, collected by the COUNTY pursuant to this Agreement shall be paid to DEVELOPER, or such other person or entity as DEVELOPER may direct by written notice to the COUNTY, within thirty (30) days following collection thereof by the COUNTY. It is understood and agreed that the COUNTY's obligation to reimburse DEVELOPER shall be limited to funds collected from the Benefited Owners as provided herein, and payments made hereunder shall be made solely out of said funds. This Agreement shall not be construed as creating any obligation upon the COUNTY to make payments from its general corporate funds or revenue.

6. **COUNTY'S OBLIGATION.** The COUNTY and its officers, employees and agents shall make all reasonable efforts to make the aforesaid collections of the Recapture Costs, for each Benefited Parcel. Neither the COUNTY or any of its officials shall be liable in any manner for the failure to make such collections, and DEVELOPER agrees to hold the COUNTY, its officers, employees and agents, harmless from the failure to collect said fees. In any event, however, DEVELOPER and/or the COUNTY may sue any Benefited Owner owing any Recapture Costs, hereunder for collection thereof, and in the event DEVELOPER initiates a collection lawsuit, the COUNTY agrees to cooperate in DEVELOPER's collection attempts hereunder by allowing full and free access to the COUNTY's books and records pertaining to the subdivision and/or development of the Benefited Parcel and the collection of any Recapture Costs therefore. In the event the COUNTY and any of its agents, officers or employees is made a party defendant in any litigation rising out of or resulting from this Agreement, DEVELOPER shall defend such litigation, including the interest of the COUNTY and shall further release and hold the COUNTY harmless from any judgment entered against DEVELOPER and/or the COUNTY and shall further indemnify the COUNTY from any loss resulting therefrom, except to the extent such loss results from the grossly negligent or willfully wrongful act or conduct of the COUNTY or any of its agents, officers or employees.

7. **TERM.** This Agreement shall remain in full force and effect for a period of twenty (20) years from the date hereof, unless sooner terminated by the mutual agreement of the parties hereto or by the completion of all duties to be performed hereunder. In the event no portion of a Benefited Parcel is a part of a subdivision approved or recognized by the COUNTY within twenty (20) years following the date of this Agreement, this Agreement, and each and every duty and undertaking set forth herein pertaining to such Benefited Parcel, shall become null and void and of no further force and effect as to such Benefited Parcel.

8. **LIEN.** The recordation of this Agreement against the Benefited Properties shall create and constitute a lien against each Benefited Parcel, and each subdivided lot hereafter contained therein, in the amount of the Recapture Costs, plus interest, applicable hereunder to such Benefited Parcel.

9. **MISCELLANEOUS PROVISIONS.**

A. **Agreement:** This Agreement may be amended upon the mutual consent of the parties hereto from time to time by written instrument and conformity with all applicable statutory and ordinance requirements and without the consent of any other person or corporation owning all or any portion of the Benefited Properties.

B. **Binding Effect:** Except as otherwise herein provided, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of DEVELOPER and any successor of the COUNTY.

C. **Enforcement:** Each party to this Agreement, and their respective successors and assigns, may either in law or in equity, by suit, action, mandamus, or other proceeding in force and compel performance of this Agreement.

D. Recordation: A true and correct copy of this Agreement shall be recorded, at DEVELOPER's expense, with the Kendall County Recorder's office. This Agreement shall constitute a covenant running with the land and shall be binding upon the Benefited Properties in accordance with the terms and provisions set forth herein.

E. Notices: Any notice required or desired to be given under this Agreement, unless expressly provided to the contrary herein, shall be in writing and shall be deemed to have been given on the date of personal delivery, on the date of confirmed telefacsimile transmission provided a hard copy of such notice is deposited in the U.S. mail addressed to the recipient within twenty-four (24) hours following the telefacsimile transmission, or on the date when deposited in the U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to COUNTY: Kendall County
Attn: County Clerk
111 W. Fox St.
Yorkville, IL 60560
Phone: 553-4106
Fax: 553-4119

With a copy to: State's Attorney Tim McCann
807 W. John St.
Yorkville, IL 60560
Phone: 553-4157
Fax: 553-4204

If to OWNER and/or
DEVELOPER: Property Concepts, Inc.
2679 Route 34
Oswego, IL 60543
Phone: 554-6000
Fax: 554-6100

With a copy to: Law Offices of Daniel J. Kramer
1107A S. Bridge St.
Yorkville, IL 60560
Phone: 553-9500
Fax: 553-5764

F. Severability: The invalidity or unenforceability of any of the provisions hereof, or any charge imposed as to any portion of the Benefited Properties, shall not affect the validity or enforceability of the remainder of this Agreement or the charges imposed hereunder.

G. Complete Agreement This Agreement contains all the terms and conditions agreed upon by the parties hereto and no other prior agreement excepting the Annexation Agreement, regarding the subject matter of this Agreement shall be deemed to exist to bind the parties. This Agreement shall be governed by the laws of the State of Illinois.

H. Captions and Paragraph Headings: Captions and paragraph headings incorporated herein are for convenience only and are not part of this Agreement, and further shall not be used to construe the terms hereof.

I. Recitals and Exhibits: The recitals set forth at the beginning of this Agreement and the exhibits attached hereto are hereby incorporated into this Agreement and made a part of the substance hereof.

J. Enforceability: This Agreement shall be enforceable in the Circuit Court of Kendall County by any of the parties hereto by an appropriate action of law or in equity to secure the performance of the covenants herein contained.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the date first above written.

DEVELOPER:
PROPERTY CONCEPTS, INC.,
an Illinois Corporation

COUNTY:
COUNTY OF KENDALL,
an Illinois County

By: _____

By: *Nancy J. Traber*

Title: _____

Title: Kendall County Board Chairman

Attest: _____

Attest: *Paul J. Anderson*
Stephanie M. Mickelson, Deputy

Title: _____

Title: Kendall County Clerk

Prepared by:
Law Offices of Daniel J. Kramer
1107A S. Bridge St.
Yorkville, IL 60560
630.553.9500

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DEVELOPER:
PROPERTY CONCEPTS, INC.,
an Illinois Corporation

COUNTY:
COUNTY OF KENDALL,
an Illinois County

By: *Scott Klunom*

By: _____

Title: President

Title: Kendall County Board Chairman

Attest: *Wm. J. Boudink*

Attest: _____

Title: Asst. Secretary

Title: Kendall County Clerk

Prepared by:
Law Offices of Daniel J. Kramer
1107A S. Bridge St.
Yorkville, IL 60560
630.553.9500