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Cook County Recorder of Deeds  
Date: 08/15/2008 12:13 PM Pg: 1 of 18

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

WILLIAM KAPER, JR., )  
)  
Plaintiff, )  
)  
vs. )  
)  
BARRINGTON COMMUNITY UNIT )  
SCHOOL DISTRICT 220, )  
)  
Defendant. )

No. 06 CH 893

**MEMORANDUM OF MUTUAL COVENANT NOT TO SUE**

This Mutual Covenant Not to Sue (this "Mutual Covenant") is made as of ~~June~~ <sup>July 16</sup>, 2008 (the "Effective Date"), between William Kaper, Jr. ("Kaper"), on the one hand, and Barrington Community Unit School District 220 (the "School District," and together with Kaper, the "Parties," and each, a "Party"), on the other hand.

**Recitals**

**WHEREAS**, Kaper owns approximately 35 contiguous acres of land and improvements in the Village of Barrington Hills, Cook County, Illinois, bounded by Lake-Cook Road to the north and Brinker Road to the west, and comprising the properties commonly described as 409 County Line Road, 416 County Line Road, 3 Brinker Road and 5 Brinker Road, and legally described as set forth in Exhibit 1 annexed hereto (collectively, the "Kaper Property");

**WHEREAS**, the School District owns approximately 14.3 acres of land, commonly described as 205 W. County Line Road (the "School District Property");

**WHEREAS**, on January 13, 2006, Kaper filed a civil action against the School District in the Circuit Court of Cook County, Illinois, County Department, Chancery Division (the

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“Court”), in the matter styled *William Kaper, Jr. v. Barrington Community Unit School District 220*, No. 06 CH 893 (the “Lawsuit”) (see Exhibit 2 annexed hereto);

**WHEREAS**, in the Lawsuit, Kaper alleged, in part, that the certain construction activities on the School District Property caused the volume of surface water that flowed from the School District Property to the Kaper Property to increase dramatically, which Kaper further alleged resulted in flooding problems that prevent the use of the affected portions of the Kaper Property;

**WHEREAS**, Kaper has installed a drainage system and has constructed ponds on the Kaper Property which Kaper believes has satisfactorily mitigated the effect of the surface water that flows from the School District Property to the Kaper Property;

**WHEREAS**, on or about June 9, 2008, the Parties entered into that certain Settlement Agreement and Mutual Release (the “Settlement Agreement”), documenting the terms pursuant to which they settled the Lawsuit; and

**WHEREAS**, pursuant to the Settlement Agreement, the Parties agreed to execute and deliver this Mutual Covenant Not to Sue, and Kaper agreed that the School District may record it with the appropriate authority or authorities of the State of Illinois or its political subdivisions, including without limitation, the Recorder of Deeds of Cook County, Illinois.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

## Agreement

1. **Covenant from the School District.** Except as provided in paragraph 3 of this Mutual Covenant, the School District, on behalf of itself as well as its officers, directors, employees, agents, servants, representatives, predecessors, successors, shareholders, parents, subsidiaries, past, present and future affiliates, assigns, employees, board members, insurers and attorneys: hereby covenants not to sue Kaper or his agents, servants, assigns, predecessors, successors, insurers, attorneys and representatives, or the successor owners of any parcel of the Kaper Property (as currently subdivided or as may be further divided into the future), on account of any and all claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, controversies, costs, expenses, attorneys fees and losses whatsoever, whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, common law right of action or otherwise, arising out of or relating to the allegations in the Lawsuit.

2. **Covenant from Kaper.** Except as provided in paragraph 3 of this Mutual Covenant, Kaper, on behalf of himself as well as his agents, servants, assigns, predecessors, successors, insurers, attorneys, representatives and the successor owners of any parcel of the Kaper Property (as currently subdivided or as may be further divided into the future): hereby covenants not to sue the School District or its officers, directors, employees, agents, servants, representatives, predecessors, successors, shareholders, parents, subsidiaries, past, present and future affiliates, assigns, employees, board members, insurers and attorneys, on account of any and all claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments,

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offsets, contracts, obligations, liabilities, controversies, costs, expenses, attorneys fees and losses whatsoever, whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, common law right of action or otherwise, arising out of or relating to the allegations in the Lawsuit.

3. **Limitations Applicable to the Mutual Covenant.** The provisions of paragraphs 1 and 2 do not apply to, and the Parties expressly retain the right to sue each other for, any claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, controversies, costs, expenses, attorneys fees and losses whatsoever, whether in law, or in equity, and whether based on any federal law, state law, common law right of action or otherwise, that:

(a) Arise from or relate to any or all acts, omissions, transactions, events or occurrences that take place after the Effective Date of this Mutual Covenant, including without limitation, any - water flow that exceeds the current water discharge conditions as defined in the Settlement Agreement and Mutual Release, of water flowing from the School District Property to the Kaper Property. For the avoidance of doubt, the Parties intend that the covenants provided in paragraphs 1 and 2 of this Mutual Covenant affect only acts, omissions, transactions, events or occurrences that took place on or before the Effective Date of this Mutual Covenant.

(b) Any obligations created by the Settlement Agreement.

(c) (i) do not arise out of or relate to the Lawsuit, (ii) are unknown to either Party as of the Effective Date of this Mutual Covenant and (iii) could not be discovered through reasonable diligence by the Parties, their agents, or retained experts and consultants before execution of this Mutual Covenant.

4. **Expiration and Automatic Release.** Notwithstanding anything to the contrary contained in herein, this Mutual Covenant shall automatically terminate and shall be deemed to have been immediately released from the records without any further action required of either Party upon the first to occur of the date on which (a) the School District ceases to own the School District Property, or (b) on the -fiftieth (50<sup>th</sup>) anniversary of the Effective Date of this Mutual Covenant.

5. **No Rights Created.** Nothing contained in this Mutual Covenant shall be construed or deemed to constitute any right or interest, including an express or implied easement or dedication, in the Kaper Property. This Mutual Covenant accords no rights or privileges to the public or third parties and no third-party beneficiaries are intended to be created.

6. **Representations and Warranties.** The Parties warrant and represent to each other that:

(a) Each Party shall act in good faith seeking to accomplish the purpose of this Mutual Covenant;

(b) Each Party has not transferred, conveyed, released, pledged, assigned or made any other disposition of the claimed rights, interests, demands, actions or causes of action, obligations, or any other matter covered by this Mutual Covenant;

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(c) Each Party has not relied upon any promises, agreements, representations, statements or warranties in entering into this Mutual Covenant, except those that are expressly set forth herein;

(d) Each signatory to this Mutual Covenant warrants that he, she or it has the authority to execute and deliver this Mutual Covenant and to bind the Party or Parties for which he, she or it signs; in the case of the School District, the School District specifically warrants to Kaper that it has taken all actions required of it by the laws of the State of Illinois and/or the Village of Barrington Hills, Illinois, in its capacities as a body politic, a unit of local government and/or a political subdivision of the State of Illinois, to approve the terms of this Mutual Covenant and to vest its signatory to this Mutual Covenant with the authority to execute and deliver this Mutual Covenant and to bind the School District thereto; and

(e) EACH PARTY ACKNOWLEDGES THAT HE, SHE OR IT HAS READ THIS MUTUAL COVENANT IN ITS ENTIRETY AND THAT HE, SHE OR IT UNDERSTANDS AND APPRECIATES ITS CONTENTS AND SIGNIFICANCE AND HEREBY EXECUTES THE SAME AND MAKES THE RELEASE PROVIDED FOR IN THIS MUTUAL COVENANT VOLUNTARILY AND OF HIS, HER OR ITS OWN FREE WILL, HAVING FIRST HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL.

7. **Binding on Successors and Assigns.** This Mutual Covenant is and shall be binding upon: (a) the officers, directors, successors and assigns of each Party; (b) each past, present, direct or indirect parent, subsidiary division or affiliated entity of each Party; and (c) each past or present agent, representative or shareholder of each Party.

8. **Governing Law and Retention of Jurisdiction.** This Mutual Covenant shall be governed by the laws of the State of Illinois, without reference to Illinois conflicts of laws rules.

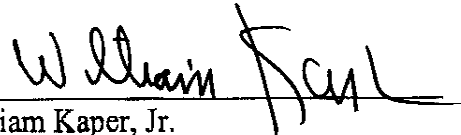
9. **Entire Agreement.** This Mutual Covenant and the Settlement Agreement constitute the entire agreement and understanding between the Parties with regard to all matters addressed in this Mutual Covenant. Except for the Settlement Agreement, this Mutual Covenant supersedes and replaces all prior commitments, negotiations, and all agreements proposed or otherwise, if any, whether written or oral, concerning the subject matters contained in this Mutual Covenant. The Parties expressly acknowledge that they have not relied on any prior or contemporaneous oral or written representations or statements by another Party in connection with the subject matter of this Mutual Covenant, except as expressly set forth herein.

10. **No Collateral Representations.** The consideration provided herein consists of the entire consideration to which the Parties will be entitled. The Parties acknowledge that none of the Parties, their agents, attorneys, insurers, representatives, successors, assigns, heirs, beneficiaries, executors, administrators, parents, subsidiaries, affiliates, current and former directors, officers, employees and representatives (as appropriate for each Party) has made any promise, representation or warranty, expressed or implied, not expressly set forth in this Mutual Covenant, which has induced any Party to execute this Mutual Covenant.

11. **Modification.** This Mutual Covenant may only be modified by a writing signed by all Parties.

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IN WITNESS WHEREOF, the Parties have executed this Mutual Covenant as of the day and year first above written.

WILLIAM KAPER, JR.   William Kaper, Jr.	BARRINGTON COMMUNITY UNIT SCHOOL DISTRICT 220  By: _____  Name: _____  Its: _____
---	--

STATE OF ILLINOIS        )  
   ) SS  
 COUNTY OF Lake        )

I, Kevin H. Keleher, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William Kaper, Jr., 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 the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 9<sup>th</sup> day of June, 2008.

  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: August 2<sup>nd</sup>, 2010



STATE OF ILLINOIS        )  
   ) SS  
 COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ of the Barrington Community School District 220, 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/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of said school district, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ day of June, 2008.

\_\_\_\_\_  
 Notary Public

My Commission Expires: \_\_\_\_\_



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## EXHIBIT 1

### Kaper Property

#### PARCEL 1

That part of the Northwest Quarter of Section 3, Township 42 North, Range 9 East of the Third Principal Meridian, described as follows: Beginning on a line 1,784.20 feet West of and parallel with the East line of the West half of the Northeast Quarter of said Section 3, and at a point on said parallel line, 1,876.65 feet (as measured along said parallel line) South of the North line of Section 3 (said parallel line having a bearing of North 00 degrees 28 minutes 33 seconds West for the purpose of this description); thence North 00 degrees 28 minutes 33 seconds West on the last described parallel line, 1008.38 feet; thence South 89 degrees 31 minutes 27 seconds West, 377.40 feet; thence South 26 degrees 36 minutes 00 seconds East, 444.71 feet; thence South 02 degrees 56 minutes 35 seconds East, 350.0 feet; thence South 90 degrees 00 minutes 00 seconds West, 20.0 feet; thence South 02 degrees 56 minutes 35 seconds East, 267.44 feet; thence North 87 degrees 02 minutes 11 seconds East, 175.17 feet to the Place of Beginning;

#### PARCEL 2

Easement for Ingress and Egress for the benefit of aforesaid Parcel 1 as reserved in Deed from Gladys C. Dickelman and husband, Harry C. Dickelman to Donald J. Martin and wife, Annette R. Martin dated February 13, 1973 and recorded March 7, 1973 as Document No. 22 243 191, over and along a strip of land 30.0 feet in width in the Northwest Quarter of Section 3, Township 42 North, Range 9 East of the Third Principal Meridian, the centerline of said 30.0 feet strip of land being more particularly described as follows: Beginning at a point on the centerline of Brinker Road, 493.00 feet South of the North line of said Section 3, (said centerline having a bearing of South 00 degrees 00 minutes 00 seconds West, for the purpose of this description); thence North 89 degrees 38 minutes 00 seconds East, 220.0 feet; thence South 81 degrees 36 minutes 40 seconds East, 15.16 feet; thence South 00 degrees 00 minutes 00 seconds West on a line parallel with the centerline of Brinker Road, 50.18 feet to a point of curve; thence Southeasterly on a curve, concave Northeasterly, and having a radius of 124.96 feet, 149.28 feet (the chord of said curve having a bearing of South 34 degrees 13 minutes 30 seconds East); thence South 71 degrees 51 minutes 30 seconds East on a line tangent with the last described curve, 101.20 feet to a point of curve; thence Southeasterly on a curve, concave Southwesterly, and having a radius of 104.83 feet; thence 116.37 feet to a point of reverse curve (the chord of said curve having a bearing of South 40 degrees 03 minutes 30 seconds East); thence Southeasterly on a curve, concave Northeasterly, and having a radius of 133.92 feet 42.87 feet (the chord of said curve having a bearing of South 17 degrees 25 minutes 45 seconds East);

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thence South 26 degrees 36 minutes 00 seconds East on a line tangent to the last described curve, 53.85 feet to the terminus point of said Easement in Cook County, Illinois.

## PARCEL 3

That part of the Northwest Quarter of Section 3, Township 42 North, Range 9 East of the Third Principal Meridian, described as follows: Beginning at a point on the North line of said Northwest Quarter, 1375.8 feet West of the Northeast corner of the West half of the Northeast Quarter of said Section, and running thence South parallel with and 1375.8 feet West of the East line of said West half of the Northeast Quarter, 2326.2 feet to the North line of Spencer Otis land; thence West along the North line of said Otis land, 408.40 feet; thence North parallel with and 1784.2 feet West of the East line of said West half of the Northeast Quarter, 2332 feet to the North line of said Northwest Quarter; thence East along the North line of said Northwest Quarter, 408.4 feet to the Place of Beginning (excepting therefrom the South 780 feet and also except the East 33 feet thereof lying North of the South 780 feet) in Cook County, Illinois.

## Parcel 4

Part of the Northwest Quarter of Section 3, Township 42 North, Range 9 East of the Third Principal Meridian, being described as follows: Beginning at a point on the centerline of Brinker Road, said point being 508.00 feet (as measured along said centerline) South of the North line of said Section 3; thence North 89 degrees 38 minutes East 220 feet (measures South 89 degrees 52 minutes 43 seconds East, 219.66 feet); thence South 204 feet (measures South 00 degrees 29 minutes 29 seconds West, 202.88 feet); thence South 74 degrees 05 minutes 30 seconds East, 183.81 feet (measures South 73 degrees 26 minutes 58 seconds East, 183.56 feet); thence South 48 degrees 42 minutes 10 seconds East, 130.88 feet (measures South 48 degrees 05 minutes 25 seconds East 130.67 feet); thence South 26 degrees 36 minutes East, 18.30 feet (measures South 26 degrees 36 minutes 00 seconds East, 18.61 feet) to the South line of the property described in Document No. 21393005 extended West; thence South 89 degrees 54 minutes 47 seconds East along said line and said line extended, 379.51 feet to a line 1784.20 feet West of and parallel with the East line of the West Half of the Northeast Quarter of said Section 3; thence North 00 degrees 05 minutes 23 seconds East 868.27 feet (measures 868.82 feet), to the North line of the East Half of the Northwest Quarter of said Section 3; thence South 89 degrees 56 minutes 11 seconds West along said North line, 426.55 feet to a point 446.95 feet East of the centerline of Brinker Road; thence South 00 degrees 27 minutes 15 seconds West, 513.95 feet to the Southeasterly corner of the parcel of real estate conveyed to Joseph H. Mueller and wife by Exchange National Bank of Chicago, as Trustee, by Deed dated July 25, 1962, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on August 20, 1962 as Document No. 18567005; thence North 81 degrees 10 minutes 31 seconds West along the Southerly line



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thereof, 229.38 feet to an angle point in said Southerly line; thence North 89 degrees 52 minutes 43 seconds West along said Southerly line, 220.00 feet to the centerline of Brinker Road; thence South 00 degrees 27 minutes 16 seconds West along said centerline, 30.00 feet to the Place of Beginning, in Cook County, Illinois.

## Parcel 5

That part of the Northwest Quarter of Section 3, Township 42 North, Range 9 East of the Third Principal Meridian described as follows: Beginning on the North line of said Section 3, a distance of 446.95 feet East of the centerline of Brinker Road; thence Westerly along said North line, 446.96 feet to the centerline of Brinker Road; thence Southerly along said centerline, 478.0 feet; thence Easterly along a line making an angle with the centerline of Brinker Road of 89 degrees 38 minutes as measured from North to East, a distance of 220.0 feet; thence Easterly along a line making an angle of 8 degrees 45 minutes 20 seconds to the right, with the prolongation of the last described line, 229.38 feet; thence Northerly, 513.95 feet to the Place of Beginning, all in Cook County, Illinois.

Common Address: 409 and 416 County Line Road and 3 and 5 Brinker Road, Barrington Hills, Illinois.

PINs: 01-03-101-033-0000  
01-03-101-030-0000  
01-03-101-037-0000  
01-03-101-022-0000

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## SCHOOL DISTRICT PROPERTY

### PARCEL 1:

THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 42 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF SAID NORTHWEST 1/4, 505.3 FEET EAST OF THE NORTHWEST CORNER THEREOF; THENCE EAST ON THE NORTH LINE OF SAID NORTHWEST 1/4, 800 FEET TO THE CENTER LINE OF PUBLIC ROAD EXTENDING SOUTH FROM COUNTY LINE ROAD; THENCE SOUTH ON CENTER LINE OF SAID NORTH AND SOUTH PUBLIC ROAD, 660 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST 1/4, 800 FEET TO A POINT 506.4 FEET EAST OF THE WEST LINE OF SAID NORTHWEST 1/4 (AS MEASURED ON A LINE PARALLEL WITH THE NORTH LINE THEREOF); THENCE NORTH ON A STRAIGHT LINE, 660 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 42 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION AND RUNNING THENCE NORTH 89 DEGREES, 51 MINUTES, 30 SECONDS EAST ALONG THE NORTH LINE THEREOF 505.3 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES, 8 MINUTES, 30 SECONDS EAST ON A STRAIGHT LINE, 660 FEET TO A POINT WHICH IS 506.4 FEET EAST OF THE WEST LINE OF SAID SECTION; THENCE WEST AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 219 FEET; THENCE NORTH 0 DEGREES, 8 MINUTES, 39 SECONDS WEST, 660 FEET TO THE NORTH LINE OF SAID QUARTER SECTION; THENCE EAST ALONG THE NORTH LINE OF SAID QUARTER SECTION TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 205 W. COUNTY LINE ROAD, BARRINGTON HILLS, IL

PINS: 01-03-100-005-0000;

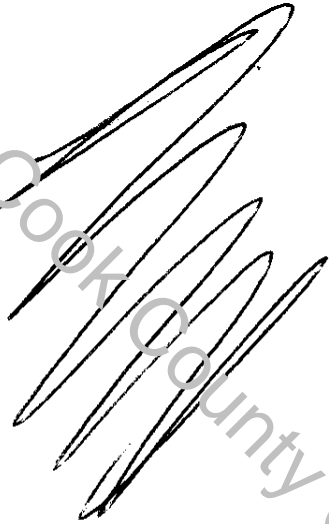
01-03-100-011-0000.

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**EXHIBIT 2**

**SEE ATTACHED**

Property of Cook County Clerk's Office

A handwritten signature in black ink, consisting of several overlapping, stylized loops, is written over the diagonal watermark text.

**UNOFFICIAL COPY****IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION****WILLIAM KAPER, Jr.,****Plaintiff,**

v.

**BARRINGTON COMM. UNIT  
SCHOOL DISTRICT 220,****Defendant.****CASE: 06 CH 893****FIRST AMENDED COMPLAINT**

Plaintiff, William Kaper, Jr. ("Mr. Kaper" or "Plaintiff"), by his undersigned attorneys, hereby submits his First Amended Complaint against Barrington Community Unit School District 220 (the "School District" or "Defendant") and alleges as follows:

**FACTUAL BACKGROUND**

1. Mr. Kaper owns approximately 35 contiguous acres of land and improvements in the Village of Barrington Hills, Cook County, Illinois, bounded by Lake Cook Road to the north and Brinker Road to the west (collectively the "Kaper Parcel"). The Kaper Parcel comprises properties commonly known as 409 County Line Road, 416 County Line Road, 3 Brinker Road and 5 Brinker Road. The Kaper Parcel contains an existing residence, and Mr. Kaper is in the process of constructing a new residence.
2. Directly to the west of the Kaper Parcel, on the west side of Brinker Road, south of County Line Road, is the Countryside Elementary School ("Countryside School").
3. Countryside School is owned, operated by and part of the School District. It is located on approximately 14.3 acres of land. The Countryside School property is commonly known as 205 W. County Line Road (the "Countryside School Parcel").
4. The portion of the Kaper Parcel known as 409 County Line Road is located directly to the east of the Countryside School Parcel, separated by Brinker Road.
5. Historically, surface water has naturally drained from the Countryside School Parcel to the portion of the Kaper Parcel known as 409 County Line Road, and then to the portion of the Kaper Parcel known as 3 Brinker Road.

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6. For many years there has been a culvert running under Brinker Road through which water from the eastern portion of the Countryside School Parcel passed to the western portion of 409 County Line Road.

7. Since approximately the 1940s, a small school had been located on the Countryside School Parcel.

8. In about 1998, the School District embarked on an expansion of the Countryside School.

9. The School District completed construction of the new Countryside School in or about 2002.

10. The new Countryside School is significantly larger than the old Countryside School. Among other things, the overall footprint of the new structure is much larger than the old structure. The size of the structure violates the Village of Barrington Hills' Zoning Ordinance's maximum floor area ratio and does not comply with contemporary standards of design for maximum floor area ratio. The new structure also includes large, blacktop parking lots that did not exist previously. The new structure and the new parking lots have greatly increased the amount of impervious area on the Countryside School Parcel, thus decreasing the amount of natural seepage of water on that parcel.

11. In addition to the new structure and new parking lots, School District 220 created a new drainage system in connection with the expansion, including new berms and a new detention pond. Water that historically flowed to the south and west of the Countryside School Parcel is now diverted to that detention pond on the east side of that parcel. That detention pond empties its water onto the Kaper Parcel through the culvert running under Brinker Road.

12. The net effect of the new construction increased substantially the volume of surface water flowing from the Countryside School Parcel to the Kaper Parcel.

13. This diversion of water by School District 220 to the Kaper Parcel is beyond a range consistent with the policy of reasonableness of use.

14. The increase in the volume of water flow has caused flooding problems on the Kaper Parcel. Due to the construction of the new Countryside School, water now accumulates and remains on the Kaper Parcel, thereby preventing the use of that portion of the Kaper Parcel. Water now ponds on the Kaper Parcel after normal rains where it did not previously, and that water remains on the Kaper Parcel for extended periods of time. This flooding is frequent and occurs on a continuous basis. Since the construction of the new Countryside School, water floods roads on the Kaper Parcel and makes travel on these roads impossible. This situation not only interferes with Mr. Kaper's use and enjoyment of his premises, but also has decreased the value of the Kaper Parcel and has rendered large portions of it uninhabitable.

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15. Mr. Kaper has been and will be damaged by the School District's wrongful diversion of water onto the Kaper Parcel, which has decreased the value of the Kaper Parcel and will require expenditures of significant sums of money to address the flooding conditions.

16. When the School District constructed the new Countryside School, it was aware that its construction of the school would significantly increase the amount of water flowing to the Kaper Parcel. Its actions were unreasonable, arbitrary and oppressive.

**COUNT I**  
**INJUNCTIVE RELIEF -FLOODING**  
**(Separate Action in Chancery)**

17. Plaintiff realleges and incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 16 as paragraphs 1 through 16 of this Count I.

18. Plaintiff possesses a clear right to use the Kaper Parcel free and clear of unreasonable invasion of water on the Kaper Parcel.

19. Plaintiff does not have an adequate remedy at law to compensate him for the School District's unlawful diversion of water onto the Kaper Parcel.

20. Plaintiff will suffer irreparable harm if an injunction is not granted in his favor.

Wherefore, Plaintiff asks this Court to grant a permanent injunction requiring the School District to restore the natural flow of water from the Countryside School Parcel, and to grant any other relief the Court deems just.

**COUNT II**  
**PRIVATE NUISANCE -FLOODING**  
**DAMAGE CLAIM**  
**(Separate Action at Law)**

21. Plaintiff realleges and incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 20 as paragraphs 1 through 20 of this Count II.

22. The School District's diversion of water has significantly interfered with Mr. Kaper's use and enjoyment of the Kaper Parcel.

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**COUNT III**  
**TRESPASS-FLOODING**  
**DAMAGE CLAIM**  
**(Separate Action at Law)**

23. Plaintiff realleges and incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 16 as paragraphs 1 through 22 of this Count III.

24. The School District has invaded the Kaper Parcel through its diversion of water onto the Kaper Parcel and prevented the use of large portions of the Kaper Parcel.

**COUNT IV**  
**INVERSE CONDEMNATION**  
**(Separate Action at Law)**  
**(Count IV is pled in the alternative)**

25. Plaintiff realleges and incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 24 as paragraphs 1 through 24 of this Count IV.

26. The flooding of the Kaper Parcel occurs every time there is any rainfall on the property.

27. When there is a heavy rainfall, there is standing water in excess of two feet on the Kaper Parcel. The standing water after a heavy rainfall spreads over 600 feet east of Brinker Road, depresses the ground, stains the pavement and remains on the property for five to seven days, if not longer.

28. When there is a normal rainfall, there is standing water in excess of one foot on the Kaper Parcel. The standing water after a normal rainfall spreads approximately 300 feet east of Brinker Road, depresses the ground, stains the pavement and remains on the property for three to five days, if not longer.

29. Even when there is a light rainfall, there is standing water in excess of six inches on the Kaper Parcel. The standing water after a light rainfall spreads approximately 200 feet east of Brinker Road and remains on the property for one to three days, if not longer.

30. The flooding conditions described herein are present on the property the vast majority of the year and thereby prevent Kaper from having the reasonable use and enjoyment of the Kaper Parcel.

31. The School District has effected a taking of the Kaper Parcel without paying Mr. Kaper just compensation.

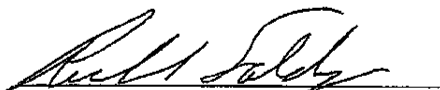
32. The School District's actions are in violation of the United States Constitution, Fifth Amendment, and the Illinois Constitution, Art. I, §15.

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Wherefore, Plaintiff asks this Court to enter judgment in his favor and against the Defendant in amount to be determined by a jury in excess of \$100,000, and to grant any other relief the Court deems just.

Date: September 5, 2006

WILLIAM KAPER, JR.



By: One of his attorneys

Jay S. Geller  
Richard A. Salinger  
Rebecca Hanson  
Shaw Gussis Fishman Glantz Wolfson & Towbin LLC  
321 North Clark Street, Suite 800  
Chicago, Illinois 60610  
Phone: 312.541.0151  
Fax: 312.980.3888  
Firm # 40039

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

WILLIAM KAPER, Jr.,

Plaintiff,

v.

BARRINGTON COMMUNITY UNIT  
SCHOOL DISTRICT 220,

Defendant.

Case No.: 06 CH 893

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NOTICE OF FILING

To: Wayne Plaza  
Cheryl Warzynski  
Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, IL 60606

**PLEASE TAKE NOTICE** that on this 5<sup>th</sup> day of September, 2006, I caused to be filed Plaintiff's **FIRST AMENDED COMPLAINT** with the Clerk of the Circuit Court of Cook County, Illinois, a copy of which is attached hereto and hereby served upon you.

  
Richard A. Saldinger

Jay S. Geller  
Richard A. Saldinger  
Rebecca Hanson  
Shaw Gussis Fishman Glantz Wolfson & Towbin LLC  
321 North Clark Street, Suite 800  
Chicago, Illinois 60610  
Phone: 312.541.0151  
Fax: 312.980.3888  
Firm # 40039

# UNOFFICIAL COPY

## CERTIFICATE OF SERVICE

Richard A. Saldinger, an attorney, certifies that he caused a copy of the foregoing Notice of Filing and all documents referenced therein to be served upon counsel of record via U.S. Mail this 5<sup>th</sup> day of September, 2006, addressed to:

Wayne Plaza  
Cheryl Warzynski  
Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, IL 60606



Richard A. Saldinger