

CHAPTER 7
DEDICATION OF LANDS OR CASH CONTRIBUTIONS IN LIEU THEREOF

Section

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§5-7-1: LEGISLATIVE INTENT:

As a condition of approval of a final plat of subdivision or of a final plat of a planned development, each subdivider or developer shall be required to dedicate land for library, park, recreational, fire/rescue and school purposes to serve the immediate and future needs of the residents of the development, or shall be required to make a cash contribution in lieu of actual land dedication, or a combination of both, at the option of the Village with the concurrence of the affected district or districts, which concurrence shall be obtained in writing. However, the Village shall have the final decision making power in this regard. Land dedication sites may be made to the Village or to the applicable district at the discretion of the Village Board. The dedications and cash contributions required hereunder shall be made in accordance with the criteria and formulas herein. (Ord. 2003-021, 7-21-2003)

§5-7-2: CRITERIA FOR REQUIRING SCHOOL SITE DEDICATIONS:

(A) Requirement and Population Ratio:

The ultimate number of students to be generated by a subdivision or planned development shall bear directly on the amount of land required to be dedicated for school sites. The land dedication requirement shall be determined by obtaining the ratio of: 1) estimated children to be served in each

such school classification over the 2) maximum recommended number of students to be served in each such school classification as stated herein, and then applying such ratio to 3) the appropriate number of acres for a school site of each such school classification as stated herein. The product thereof shall be the acres of land deemed needed to have sufficient land for school sites to serve the estimated increase in number of students for each such school classification.

(B) School Classifications and Size of School Site:

These requirements for acreage are based upon a review of available data studies and literature on the subject, including, but not limited to, information provided by the state superintendent of education and the unique characteristics of the Village, including its general rural character and open spaces, and the desire of the residents to maintain this character and open space in future school sites. These requirements for acreage shall be presumed as the appropriate acreage requirements and shall be used in calculating any cash in lieu of land dedication herein unless timely objected to as provided herein. Objections to these acreage requirements for any particular development shall be made in accordance with Section 5-7-17 of this Chapter to the Plan Commission. Failure to timely object to these acreage requirements in accordance with Section 5-7-17 of this Chapter shall thereafter waive any right to raise an objection at a later time.

School classifications and size of school sites within the Village shall be determined in accordance with the following criteria:

SCHOOL DISTRICT 95		
School Classification By Grades	Maximum Number Of Students For Each Such School Classification	Appropriate Number Of Acres Of Land For Each School Site Of Such Classification
Elementary schools, grades kindergarten through 5 or 6	600 students	11 acres
Junior high schools, grades 6 through 8 or 7 and 8	900 students	29 acres
High schools, grades 9 through 12	1,500 students	45 acres

SCHOOL DISTRICT 220		
School Classification By Grades	Maximum Number Of Students For Each Such School Classification	Appropriate Number Of Acres Of Land For Each School Site Of Such Classification
Elementary schools, grades kindergarten through 5 or 6	500 students	15 acres
Junior high schools, grades 6 through 8 or 7 and 8	800 students	25 acres
High schools, grades 9 through 12	2,500 students 500 (addn. only) 3,000 students total	72 acres 15 acres adjacent to present high school 87 acres total

SCHOOL DISTRICT 300		
School Classification By Grades	Maximum Number Of Students For Each Such School Classification	Appropriate Number Of Acres Of Land For Each School Site Of Such Classification
Elementary schools, grades kindergarten through 5 or 6	600 students	15 acres
Junior high schools, grades 6 through 8 or 7 and 8	900 students	30 acres
High schools, grades 9 through 12	1,800 students	60 acres

(C) Location:

The comprehensive school plan and/or the standards adopted by the affected school district shall be used as a guideline in locating sites. School sites shall be located in the Village in accordance with plans heretofore or hereafter adopted by the school district. If the school district has not planned a school site within the Village or the proposed subdivision or planned development, or in the neighborhood in which such subdivision or planned development is located, the school site shall be so located as to be readily accessible to the greatest number of children projected for such neighborhood.

(Ord. 2003-021, 7-21-2003)

§5-7-3: CRITERIA FOR REQUIRING PARK AND RECREATIONAL LAND DEDICATIONS:

(A) Suitability:

The land for park and recreational dedications shall be suitable for the purpose for which it is intended. Land set aside by developers for parks, recreation and conservation purposes shall not be what has been “left over” after residential, commercial and industrial development.

(B) Requirement and Population Ratio:

The ultimate density of a proposed development shall bear directly on the amount of land required for dedication for park and recreational purposes. The total requirement shall be ten (10) acres of land per one thousand (1,000) of ultimate population and may be allocated by the Village Board at its discretion based upon the following criteria:

Type Of Recreation Area	Minimum Size	Park Acreage Per 1,000 Persons
Play lot	8,000 square feet	<1
Neighborhood park	3 acres	2
Villagewide park for active sports	10 acres	4
Villagewide community park	15 acres	4

These requirements for acreage are based upon a review of available data studies and literature on the subject, including, but not limited to, the National Recreation and Park Association's "Recreation, Park and Open Space Standards and Guidelines, 1990". These requirements shall be presumed as the appropriate acreage requirements and shall be used in calculating any cash in lieu of land dedication herein unless timely objected to as provided herein. Objections to these acreage requirements for any particular development shall be made in accordance with Section 5-7-17 of this Chapter to the Plan Commission. Failure to timely object to these acreage requirements in accordance with Section 5-7-17 of this Chapter shall thereafter waive any right to raise an objection at a later time.

(C) Location:

The park and recreation plans as adopted by the Village's Comprehensive Plan shall be used as a guideline in locating sites. A central location that will serve equally the entire development or a location that is adjacent to existing park and recreational land is most desirable. In large developments, these sites can be located throughout the development according to established standards for park area distances.

(Ord. 2003-021, 7-21-2003)

§5-7-4: FIRE/RESCUE CAPITAL FACILITIES CONTRIBUTIONS AND SITE DEDICATION:

(A) Requirement and Population Ratio:

The development of new subdivisions and planned developments increases the demands upon the existing fire/rescue protection service provided by the Village in a proportionate and ascertainable manner and creates the need for additional fire/rescue, firehouse and training sites. Studies reveal the need to develop additional fire/rescue protection services. Therefore, as a condition of approval of a final plat of subdivision or of a final plat of a planned development, each developer or subdivider shall be required to dedicate land for fire/rescue facilities to serve the immediate and future needs of the residents of the development or shall be required to make a cash contribution in lieu of actual land dedication.

The ultimate density of a proposed development shall bear directly on the amount of land required for a fire/rescue site dedication. The Village hereby finds that the total requirement shall be three (3) acres of land per ten thousand (10,000) of ultimate population. This requirement is based upon a review of available data as well as the fire/rescue district's own internal examination of fire/rescue utilization and needs.

This contribution and/or dedication is based upon a review of available data, studies and literature, including, but not limited to, the requirements of surrounding communities. They shall be presumed to be correct and accurate and shall be used in calculating cash contributions herein unless timely objected to as provided herein. Objections to this section shall be made in accordance with Section 5-7-17 of this Chapter. Failure to timely object to these requirements in strict accordance with Section 5-7-17 of this Chapter shall thereafter waive any right to raise an objection at a later time.

The fire/rescue capital facilities contribution shall be held in trust by the Village or other public body designated by the Village and shall be used for the purpose of assisting in providing additional facilities for municipal purposes. The Village may contract with other units of local government for the provision of fire/rescue services. Funds obtained pursuant to this section may be transferred to those entities for the purpose of assisting in the provision of additional facilities which will benefit the Village.

- (B) Location: The location of any new fire/rescue facility and/or training site shall be determined by the appropriate fire district in consultation with the Village.

(Ord. 2003-021, 7-21-2003)

§5-7-5: CRITERIA FOR REQUIRING LIBRARY SITE DEDICATION:

- (A) Requirement and Population Ratio:

The ultimate density of a proposed development shall bear directly on the amount of land required for dedication. New development and increased population create greater demands for adequate and efficient library services to meet the educational, cultural and recreational needs of the citizenry. They create the need for additional library facilities. The Village hereby finds that the total requirement shall be 2.5 acres of land per ten thousand (10,000) of ultimate population.

These requirements are based upon a review of available data, studies and literature on the subject, as well as the library district's own internal examination of library utilization and needs. They shall be presumed as the appropriate acreage requirements and shall be used in calculating any cash in lieu of land contribution herein unless timely objected to as provided herein. Objections to these acreage requirements for any particular development shall be made in accordance with Section 5-7-17 of this Chapter. Failure to timely object to these acreage requirements in accordance with Section 5-7-17 of this Chapter shall thereafter waive any right to raise an objection at a later time.

- (B) Location:

The location of any new library facility shall be determined by the library after consultation with the Village.

(Ord. 2003-021, 7-21-2003)

§5-7-6: CRITERIA FOR REQUIRING A CASH CONTRIBUTION:

When the development is small and the resulting site is too small to be practical, or when the available land is inappropriate for park and recreational purposes or school, fire/rescue or library sites or is in conflict with the approved comprehensive school plan, the Village, with the concurrence of the affected district, shall require the subdivider or developer to pay a cash contribution in lieu of the land dedication.

The cash contribution in lieu of dedication of school sites shall be held in trust by the Village or other public body designated by the benefiting school district and shall be used solely for the acquisition of land for school sites to serve the immediate or future needs of children from that subdivision or development or for the expansion of any existing school site that already serves such needs, but not for the construction of school buildings or additions thereto unless agreed to otherwise by the subdivider or developer at the time of platting.

The cash contribution in lieu of park and recreation land dedication shall be held in trust by the Village or other public body designated by the benefiting park district and shall be used solely for the acquisition of park and recreation land as classified above, which will be available to serve the immediate or future needs of the residents of that subdivision or development or for the expansion of other existing local park and recreation lands that already serve such needs or for any other lawful park purpose or for any park purpose agreed to by the subdivider or developer at the time of platting.

The cash contribution in lieu of a library site dedication shall be held in trust by the benefiting library district or other public body as designated by the Village and shall be used for the acquisition of library land as required herein, which will be available to serve the immediate or future needs of the residents of that subdivision or development or for the expansion of existing or proposed library facilities that already serve or will serve such needs or for any other lawful purpose agreed to by the subdivider or developer at the time of platting.

The cash contribution in lieu of fire/rescue sites shall be held in trust by the benefiting fire protection district or fire department or other public body as designated by the Village and shall be used for the acquisition of land for fire/rescue facilities or training sites to serve the immediate and future needs of the residents of that subdivision or development or for the expansion of any other existing fire station or training site that already serves such needs or for any other lawful fire/rescue purpose agreed to by the subdivider or developer at the time of platting.

If any portion of a cash contribution in lieu of park and recreation or fire/rescue land dedication or dedication of library and/or school sites is not expended for the purposes set forth herein within thirteen (13) years from the date of receipt, it shall be refunded by the entity holding the contribution to the record owner of the subdivided land at the time of the refund. If there is more than one record owner of the subdivided land or of the land that comprises the planned development, as applicable, such record owners shall share in the refund pro rata based on the cash contributions originally paid by each property.

(A) Fair Market Value:

The cash contributions in lieu of land shall be based on the “fair market value” of the acres of land in the area that otherwise would have been dedicated as park and recreation, library, fire/rescue and school sites. The fair market value, on a per acre basis, shall assume, unless determined otherwise pursuant to this Chapter, that the land is zoned in a one-family dwelling residential zoning district subdivided with appropriate frontage on a dedicated street or road, has all appropriate utilities available, is improved as set forth in Sections 5-7-11 and 5-7-12 of this Chapter, and is otherwise property capable of being used for residential development. Based upon a study of comparable real estate transactions, it has been determined that the present “fair market value” of such improved land in and surrounding the Village is, as of the effective date of this Chapter as follows:

Fair Market Value	Purpose
\$196,000.00 per acre	Locating an elementary or junior high school within School Districts 95, 220 and 300 and locating a high school within School District 300.
\$350,000.00 per acre	Adding onto the existing high school in School District 220 ¹ .
\$ 98,000.00 per acre	Locating a park ² .
\$500,000.00 per acre	Locating a fire station ³ .
\$350,000.00 per acre	Locating and/or adding onto the existing library ⁴ .

Footnotes As To Valuation:

¹School District 220 does not plan to build a second high school, but rather, may add onto the existing high school. Vacant property adjacent to the high school has recently sold, and this is the basis for the \$350,000.00 figure. If the district were to have to condemn residential property adjacent to the high school, the cost to the district would be in excess of \$1,000,000.00 per acre.

²Land suitable for park and recreational purposes may have a lesser value depending upon location, buildability, and whether the site is used as an active or passive park site.

³Fire stations must be strategically located to maximize response time and have access to major arterial roads. This fair market value reflects these considerations.

⁴An addition to the existing library would entail purchase of property adjoining the existing library. A second library must be strategically located to accommodate the maximum number of patrons, and in the tradition of the existing library, be on a major thoroughfare.

These figures shall be adjusted by the Village Board from time to time with appropriate study and documentation. The "fair market value" as defined above shall be used in calculating any cash in lieu of land dedication herein unless timely objected to as provided in Section 5-7-17 of this Chapter. Objections to the "fair market value" as defined above shall be made in accordance with Section 5-7-17 of this Chapter to the Plan Commission. Failure to timely object to the "fair market value" as defined above in accordance with Section 5-7-17 of this Chapter shall thereafter waive any right to raise an objection at a later time.

(B) Criteria For Requiring Dedication and a Contribution:

There will be situations in subdivisions or planned developments when a combination of land dedication and a cash contribution in lieu of land are both necessary. These occasions will arise when: 1) only a portion of the land to be developed is proposed as the location for a library, park, fire/rescue or school site (that portion of the land within the subdivision falling within the library, park, fire/rescue or school location shall be dedicated as a site as stated above, and a cash contribution in lieu thereof shall be required for any additional land that would have been required to be dedicated); or 2) a major part of the local library, park, fire/rescue or school site has already been acquired by the particular district or village and only a small portion of land is needed from the development to complete the site (the remaining portion shall be required by dedication, and a cash contribution in lieu thereof for the rest of the required land shall be required).

(Ord. 2003-021, 7-21-2003)

§5-7-7: CONSUMER PRICE INDEX:

The fair market value identified in Section 5-7-6 of this Chapter shall be subject to a “CPI adjustment” which shall be calculated on January 1, 2003, and on January 1 in each year thereafter. Annually, the fixed charge shall be adjusted to an amount equal to the fixed charge multiplied by a fraction, the numerator of which is the “all items” Consumer Price Index for urban consumers (1982-84 = 100) for Chicago, Illinois, published by the United States Department of Labor’s Bureau of Labor Statistics (“CPI”) for the month of December preceding the year of adjustment and the denominator of which is the CPI for the month of December preceding the month of adjustment. If any index is calculated from a base different from the base period 1982-84 = 100, such index shall be converted to a base period of 1982-84 = 100 by use of a conversion factor supplied by said Bureau of Labor Statistics. If the CPI is discontinued or replaced, such other governmental cost of living index or computation which replaces the CPI shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or replaced. (Ord. 2003-021, 7-21-2003)

§5-7-8: DENSITY FORMULA:

The “Table Of Estimated Ultimate Population Per Dwelling Unit”, prepared by Illinois School Consulting Service/Associated Municipal Consultants, Inc., Naperville, Illinois, and as updated from time to time by the consulting firm, shown below, constitutes projections of anticipated population density and is generally indicative of current and short range projected trends in family size for new construction and shall be used in calculating the amount of required dedication of acres of land or the cash contributions in lieu thereof unless a written objection is filed thereto by the subdivider or developer pursuant to Section 5-7-17 of this Chapter.

TABLE OF ESTIMATED ULTIMATE POPULATION PER DWELLING UNIT

Type of Unit	Children Per Unit					Adults (18 Years +)	Total Per Dwelling Unit
	Preschool (0-4 Years)	Elementary Grades K-5 (5-10 Years)	Middle Grades 6-8 (11-13 Years)	Total Grades K-8 (5-13 Years)	High School Grades 9-12 (14-17 Years)		
Detached Single-Family							
2 bedroom	0.113	0.136	0.048	0.184	0.020	1.700	2.017
3 bedroom	0.292	0.369	0.173	0.542	0.184	1.881	2.899
4 or more bedrooms	0.418	0.530	0.298	0.828	0.360	2.158	3.764
Attached Single-Family							
1 bedroom	0.000	0.000	0.000	0.000	0.000	1.193	1.193
2 bedroom	0.064	0.088	0.048	0.136	0.038	1.752	1.990
3 bedroom	0.212	0.234	0.058	0.292	0.059	1.829	2.392
4 bedroom	0.323	0.322	0.154	0.476	0.173	2.173	3.145
Apartments							
Efficiency	0.000	0.000	0.000	0.000	0.000	1.294	1.294
1 bedroom	0.000	0.002	0.001	0.003	0.001	1.754	1.758
2 bedroom	0.047	0.086	0.042	0.128	0.046	1.693	1.914
3 bedroom	0.052	0.234	0.123	0.357	0.118	2.526	3.053

Source: Illinois School Consulting Service/Associated Municipal Consultants, Inc., as modified for BACOG, November 2002

A bedroom as used in this Chapter shall include any room which may be used for bedroom purposes, such as a den, study, loft or extra room located on any floor in a dwelling unit which may be convertible into a sleeping area and is not clearly identified for some other specific purpose such as a kitchen (1 per unit), dining room (1 per unit), living room (1 per unit), bathroom(s) and family room (1 per unit).

The most recent version of the table of estimated ultimate population per dwelling unit shall be used in calculating any cash in lieu of land dedication herein unless objected to as provided in Section 5-7-17 of this Chapter. Objections to the table of estimated ultimate population per dwelling unit shall be made in accordance with Section 5-7-17 of this Chapter to the Plan Commission. Failure to object to the table of estimated ultimate population per dwelling unit in accordance with Section 5-7-17 of this Chapter shall thereafter waive any right to raise an objection at a later time.

In the event a subdivider or developer files a written objection to the table of estimated ultimate population per dwelling unit, he shall submit his own demographic study showing the estimated additional population to be generated from the subdivision or planned development, and in that event final determination of the density formula shall be made in accordance with Section 5-7-17 of this Chapter.

(Ord. 2003-021, 7-21-2003)

§5-7-9: RESERVATION OF ADDITIONAL LAND:

When the Comprehensive Plan or the standards of the Village call for a larger amount of park and recreational land or library or school sites in a particular subdivision or planned development than the developer is required to dedicate pursuant to this Chapter, the land needed beyond the developer's dedication shall be set aside and reserved by the developer for subsequent purchase by the Village (at a price determined at the time of reservation) or other public body designated by the Village, provided that such acquisition is made within five (5) years from the date of approval of the final plat. (Ord. 2003-021, 7-21-2003)

§5-7-10: COMBINING WITH ADJOINING DEVELOPMENTS:

Where appropriate, a public open space or a school site that is to be dedicated should, if possible, be combined with dedications from adjoining developments in order to produce usable recreation areas and/or school sites without undue hardship on a particular developer. (Ord. 2003-021, 7-21-2003)

§5-7-11: TOPOGRAPHY AND GRADING:

The slope, topography and geology of the dedicated site as well as its surroundings must be suitable for its intended purpose. Wetlands and floodplains may be accepted for village ownership and maintenance, but shall not serve as a credit toward the required park site dedication. Storm water detention areas shall not be accepted for Village ownership and maintenance, and the portion of a detention area designed to function primarily as a component of the storm water control system shall not serve as a credit toward the required park site dedication. A park site shall be not less than one acre in area. The Village Board reserves the right, however, in its sole discretion, to accept in whole or in part, certain areas such as, but not limited to, tree massings, prairie remnants, high quality or unique wetlands, or other natural features

as all or part of the required park site dedication in furtherance of open space preservation that may be unique to a given parcel or development. Wetlands, floodplains, detention areas, retention areas and areas of steep slope shall not be accepted as school, park, fire/rescue or library sites and shall not serve as a credit toward the required school, park, fire/rescue or library site cash contribution in lieu of land dedication.

In addition, the following site conditions and preparation standards shall be met:

(A) Slope:

1. Should not vary greatly in appearance from existing and adjacent slopes;
2. Optimum slopes range from two percent (2%) minimum to five percent (5%) maximum. No less than two percent (2%) slope is acceptable under any circumstances;
3. Maximum allowable slope is ten percent (10%), except under special conditions where greater slopes are desirable to enhance the use of the site; and
4. On site drainage patterns shall be designated and constructed to:
 - (a) Ensure flow toward swales; and
 - (b) Ensure drainage away from active areas.

(B) Grading:

1. Rough grading shall be completed at time of rough grading of adjacent contiguous area;
2. Grading shall comply with village approved plans;
3. Subgrade shall be graded and compacted so it will parallel finished grade;
4. Subgrade material shall be loosened and fine graded to a depth of two (2) to four inches (4"). All stones over four inches (4") in size, sticks, debris, rubbish and other foreign substances shall be removed; and
5. Finished grades shall be uniform in slope between points for which elevations have been established.

(C) Soils:

1. Soils shall not differ from those naturally occurring;
2. Soils shall not offer any restriction to the ultimate use of the property;
3. Topsoil shall be spread evenly and lightly compacted to a minimum depth of six inches (6") over the entire site;
4. Topsoil must be good, friable soils with good tillage and shall be without any admixture of subsoil, clay, gravel, stones, debris, refuse, sand or other subsurface elements;
5. Topsoil shall not be placed in a muddy or frozen condition;
6. Topsoil shall contain no toxic substances which may be harmful to plant growth; and
7. Topsoil shall be spread no later than the placement of topsoil on the first lot adjacent to the site.

(D) Seeding:

1. All proposed library, park and recreational and school sites shall be seeded and an acceptable stand of grass or vegetation established prior to dedication of the area to the Village;
2. Village approved ground covers and grasses shall be used for all park and recreational areas suitable for the nature of the activity planned to occur thereon;
3. Seeding shall be completed during the fall or spring planting times, depending upon the recommended seed planting specifications;

4. Seeding shall be on moderately dry soil on a seed bed which will easily accept and nurture germination of seeds;
5. Seeding shall be watered sufficiently so that the vegetation becomes reasonably established; and
6. The developer shall be responsible for making necessary reparations to the site caused by erosion or other damage. Reparations shall be completed prior to acceptance of the site.

(Ord. 2003-021, 7-21-2003)

§5-7-12: IMPROVED SITES:

All sites shall be dedicated in a condition ready for full service of electricity, natural gas, telephone and cable television, and streets (including enclosed drainage and curb and gutter, where applicable), as applicable to the location of the site, and shall otherwise comply with the requirements of the Village ordinances and codes. The landscaping normally included within the definition of “improved” sites under said ordinances and codes may be deleted due to the delay time between dedication of any such school site and the construction of school facilities thereon, except for ground cover as required in Section 5-7-11 of this Chapter. The site shall have direct access to a fully improved street across at least twenty percent (20%) of the distance of its perimeter. School and park sites should ideally be accessible by a bicycle/pedestrian trail, and any such access route onto the property shall be at least twenty five feet (25') wide. Such access routes should normally be dedications and not easements, depending on which entity of government is to be responsible for said routes. Any vehicular access route leading to or on the site shall be of sufficient size and good geometry to properly accommodate vehicles that will access and traverse the site, including, but not limited to, good principles of traffic circulation, accommodation of one-way and/or two-way drives for school buses, separation of bus traffic from passenger automobile traffic, bus dropoff areas separate from publicly dedicated streets, guest and employee parking areas, and the like. Such off street access routes, drives, dropoffs and parking areas will not be dedicated rights-of-way and shall be the responsibility of the owner of the site to maintain. (Ord. 2003-021, 7-21-2003)

§5-7-13: ENVIRONMENTAL RISK AUDIT:

Prior to the conveyance of any land to the Village, library district, park district, fire protection district or school district, the intended grantee shall be furnished with an environmental risk audit prepared by an environmental professional meeting the minimum requirements of 415 Illinois Compiled Statutes 5/22.2(j)(6)(E)(iii), certified to and acceptable to the grantee, assuring the grantee that there are no hazardous substance(s) (as defined hereinafter) on, under, to or from the land. Said environmental audit shall be what is commonly referred to as a phase I environmental audit, which shall meet the minimum requirements for a pre-acquisition audit as set forth in 415 Illinois Compiled Statutes 5/22.2(j)(6)(E)(v).

In the event the phase I environmental audit does not conclude there is no presence or likely presence of a release or substantial threat of a release of hazardous substance(s) or pesticide on, under, to or from the land, the grantee shall furnish a phase II environmental audit as set forth in 415 Illinois Compiled Statutes 5/22.2(j)(6)(E)(vi), including a soil toxicity analysis and recommendation from said environmental professional, meeting the minimum requirements of 415 Illinois Compiled Statutes 5/22.2(j)(6)(E)(iii), which concludes that there is no presence or likely presence of a release or substantial threat of a release of hazardous substance(s) on, under, to or from the land, and certifying that, in the judgment of said environmental professional, there is no reasonable probability that the land contains any hazardous substance(s) in violation of any federal or state environmental standards.

In the event said phase II environmental audit and/or soil toxicity analysis discloses the presence or likely presence of a release or a substantial threat of a release of any hazardous substance(s) at, on, under, to or from the land to be conveyed, the grantor shall first cause all such hazardous substance(s) to be removed at its sole cost and expense in accordance with all federal, state and local environmental laws, rules and regulations and furnish the intended grantee with a “no further remediation letter” from the governmental agencies having jurisdiction over the cleanup prior to conveyance of any of the land to the intended grantee.

Prior to the conveyance of the land, the subdivider or developer, as the case may be, and the owner of the land to be conveyed, shall execute and deliver to the intended grantee an environmental indemnification agreement, which form has been approved by the Village Attorney, agreeing to defend, indemnify and hold the Village, its corporate authorities, officers, officials, employees, agents, successors and assigns, and the school district, as the case may be, and its respective officers, officials, employees, agents, successors and assigns, harmless from and against any and all liability, claims, damages, causes of action and expenses arising out of the presence of any hazardous substance(s) in, under or upon said land to be conveyed prior to the date of conveyance.

Hazardous substance(s) includes, without limitation:

- (A) Those substances included in the definitions of hazardous substances, extremely hazardous substances, hazardous materials, toxic substances, toxic chemicals, toxic wastes, hazardous chemicals, hazardous wastes, solid waste and pesticides in CERCLA, SARA, RCRA, HSWA, TSCA, OSHA, FWPCE, Illinois Pesticides Act, Illinois Responsible Property Transfer Act and the Illinois Hazardous Materials Transportation Act, 49 USC Section 1801 et seq., as amended, and as they may be amended in the future, and in the regulations promulgated pursuant to said laws.
- (B) Those substances defined in Section 1003 of the Illinois Environmental Protection Act and in the regulations promulgated pursuant to said act or other Illinois laws pertaining thereto.
- (C) Those substances listed in the U.S. Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto).
- (D) Such other substances, materials and wastes which are to become regulated under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state or local laws, ordinances or regulations.
- (E) Any material waste or substance which is: 1) asbestos, 2) polychlorinated biphenols, 3) designated as a hazardous substance pursuant to Section 311 of the Clean Water Act, 33 USC Section 1251 et seq. (33 USC Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 USC Section 1317), 4) explosives, or 5) radioactive materials.
- (F) For purposes of this Chapter, hazardous substances shall include petroleum or its byproducts as regulated under RCRA and any applicable state law or regulations.

(Ord. 2003-021, 7-21-2003)

§5-7-14: SUITABILITY OF SOILS AT SITE:

The subdivider or developer, at its own cost or expense, shall provide to the Village, library district, park district, fire protection district or school district soil boring data, soil compaction test results and such other engineering studies, data and information pertaining to the proposed school, library, fire/rescue or park and recreational site, which the Village, library district, park district, fire protection district or school district may request to enable it to determine the suitability of the proposed land dedication for library, fire/rescue or school sites or park and recreation purposes. The Village, library district, park district, fire protection district or school district shall have the right to reject any site which the Village, library district, park district, fire protection district or school district determines, in accordance with sound engineering practices, is not suitable for library site, fire/rescue site, park and recreational site or school site purposes. (Ord. 2003-021, 7-21-2003)

§5-7-15: TITLE INSURANCE, SURVEY, ASSESSMENT PLATS:

Each deed or other instrument conveying land to the Village, library district, park district, fire protection district or school district shall be accompanied by:

- (A) A written commitment issued by a title insurer licensed to do business in the state to insure the grantee's title to such real estate in an amount equal to the value computed pursuant to Section 5-7-6 of this Chapter, with extended coverage over the general exceptions to title and subject only to:
 - 1. Real estate taxes not yet due and payable,
 - 2. Covenants, conditions and restrictions which do not prohibit the use of the subject property for library, school or park and recreational use,
 - 3. Utility easements located within twenty feet (20') of the boundary lines of the subject real estate (except where approved on the final engineering plans approved by the Village Engineer),
 - 4. Drainage ditches, feeders and laterals,
 - 5. Underground pipe or other conduit, and
 - 6. Acts done or suffered by or judgments against the grantees;
- (B) A current ALTA boundary line survey, certified to the grantee by a licensed Illinois land surveyor to be in compliance with the American Land Survey Standards, showing no encroachments; and
- (C) Except in instances where the real estate to be conveyed is a lot in a recorded subdivision, an assessment plat and tax division petition in a form acceptable to the appropriate Village authorities so the land to be conveyed can be assigned its own permanent real estate index number (PIN) for exemption purposes.

In addition, monuments must be established and the land staked immediately prior to dedication of the property. The subdivider or developer shall pay for the cost of the owner's title insurance in said amount, the ALTA survey, the assessment plat and any and all costs in connection with the tax division.

(Ord. 2003-021, 7-21-2003)

§5-7-16: REAL ESTATE TAX ESCROW:

The developer shall pay the general real estate taxes on the land not yet due and payable as of the date of transfer, and shall deposit a sum of money in escrow with the intended grantee's attorney or a title

company licensed to do business in the State of Illinois, which is prorated as of the date of transfer on the basis of one hundred ten percent (110%) of the tax assessor's latest assessed valuation, the latest known equalization factors and the latest known tax rate on the land. In the event the previous tax information or the previous tax bill includes other property, then the amount to be deposited in escrow shall be adjusted ratably based on the net acreage of the land compared to the net acreage of the other parcels covered by said tax bills. After the land has been divided for real estate tax purposes and has been conveyed to the intended grantee, the grantee shall proceed with due diligence to apply for a real estate tax exemption on the land. (Ord. 2003-021, 7-21-2003)

§5-7-17: OBJECTIONS:

All objections relating to acreage requirements, presumptions as to fair market value, the “Table Of Estimated Ultimate Population Per Dwelling Unit” or any other application of this Section to a particular subdivision or planned development, shall first be referred to the Plan Commission for a hearing. An objection must be made, if at all, prior to the approval of the final plat of subdivision by the Village. A failure to object by such time shall constitute a waiver of the right to object to the provisions of this section. The procedure for a hearing before the Plan Commission shall be as follows:

(A) Duties of the Plan Commission:

The Plan Commission shall serve in an advisory capacity and shall have the following duties:

1. Advise and assist the Village in resolving objections regarding the “Table of Estimated Ultimate Population Per Dwelling Unit” in Section 5-7-8 of this Chapter, the size of the library, park, fire/rescue and school sites in Sections 5-7-5, 5-7-3, 5-7-4, and 5-7-2 of this Chapter, respectively, the fair market value of the land used to calculate the cash contribution in Section 5-7-6 of this Chapter, or any other application of this Chapter to a particular subdivision or planned development.
2. The Village shall adopt procedural rules to be used by the Plan Commission in carrying out the duties imposed by this Chapter.

(B) Information and Services To Be Used:

The Village shall make available to the Plan Commission all professional reports relating to the “Table of Estimated Ultimate Population Per Dwelling Unit”, the size of the library, fire/rescue, park and school sites and the fair market value of land used in calculating these cash contributions. The Plan Commission may also retain the services of professionals (attorneys, appraisers, statisticians, etc.) to assist in its review of issues raised by any objection.

(C) Procedure For Resolving An Objection:

1. Upon receipt of an objection, the Village President shall place the same on the next regular meeting agenda of the Village Board. Thereafter the Village Board shall refer the objection to the Plan Commission and by resolution establish a hearing date.
2. The Plan Commission shall provide public notice of the hearing date to consider the objection and shall notify affected library, fire protection, school and park districts by certified mail, return receipt requested, of the filing of the objection and of any hearing regarding same.

3. The objector shall publish notice of the hearing date once each week for three (3) consecutive weeks, at least thirty (30) days before but no more than sixty (60) days before the scheduled date of the hearing. Notice shall be published in a newspaper of general circulation within the corporate limits of the Village. The notice of public hearing shall not appear in the part of the paper where legal notices or classified ads appear. The notice shall not be smaller than one-fourth ($\frac{1}{4}$) page of a standard size or tabloid size newspaper. The objector shall send a copy of said notice to any person who has requested said notice by certified mail (stamped at a U.S. postal service facility showing the date of mailing) at least thirty (30) days prior to the hearing date.

4. The notice shall contain all of the following information:

(a) The headline shall read:

*NOTICE OF PUBLIC HEARING ON OBJECTION TO APPLICATION OF
ORDINANCE REQUIRING THE DEDICATION OF PARK LANDS, LIBRARY SITES,
FIRE/RESCUE SITES OR SCHOOL SITES OR
PAYMENT OF THE CASH CONTRIBUTIONS IN LIEU THEREOF*

(b) The date, time and location of the public hearing.

(c) A statement that the purpose of the hearing is to consider the objection to a component of the application of the ordinance requiring the dedication of park lands, library sites, school sites, or fire/rescue sites, or calculation of cash in lieu thereof.

(d) A general description of the parcel(s), service area or areas within the Village that are the subject of the hearing.

(e) A statement that the Village shall make available to the public, upon request, an easily understandable and detailed map of the parcel(s), service area or areas to which the ordinance applies, and any other available information about the objection.

(f) A statement that any member of the public affected by the ordinance or the parcel(s) or service area shall have the right to appear at the public hearing and present testimony and/or evidence in support of or against the objection.

5. A public hearing shall be held for the consideration of the objection. In addition to the Village, any affected library district, school district, park district and fire/rescue provider shall be allowed to participate in such hearing as a party thereto to present evidence, cross examine witnesses and make arguments to the Plan Commission regarding the issues raised in the objection. The Plan Commission shall make a recommendation to adopt, reject in whole or in part, or modify the objection presented at the hearing, by written report to the Village, within sixty (60) days after the hearing. The Village shall then have at least sixty (60) but not more than one hundred twenty (120) days to approve, disapprove or modify, by ordinance or resolution, the findings in this Chapter as it pertains to the development in question.

(D) Costs and Fees:

The objector shall bear all costs of the hearing before the Plan Commission, including, but not limited to, attendance fees paid the Plan Commission members, publication costs, professional consultants and any other expenses of the Village. Before a hearing date is set the objector shall deposit with the Village a ten thousand dollar (\$10,000.00) escrow to cover these costs which shall be replenished when the balance reaches two thousand dollars (\$2,000.00) or no less than monthly, by the objector after payment of any outstanding expenses incurred by the Village. Failure to

promptly replenish the escrow shall be cause to stay or defer any hearings, meetings or actions by the Village.

(Ord. 2003-021, 7-21-2003; amd. 2014 Code)

§5-7-18: CONDITION TO ANNEXATION:

The dedications of land or cash contributions in lieu thereof required by this Chapter shall also be required as a condition to the annexation of any land to the Village, and provisions therefor shall at a minimum be incorporated in any annexation or preannexation agreement governing such land. However, the Village reserves the right to negotiate dedications of land or cash contributions in lieu of land or a combination thereof greater than those set forth herein. (Ord. 2003-021, 7-21-2003)

§5-7-19: INDEMNIFICATION:

As a condition to the Village distributing land dedications and/or cash contributions in lieu thereof, the appropriate district shall execute an indemnification agreement in the form set forth in Appendix A to this Chapter. (Ord. 2003-021, 7-21-2003; amd. 2014 Code)

§5-7-20: DISTRIBUTION:

The cash contribution in lieu of land dedication imposed by this Chapter shall be collected and held by the benefiting district to be used for the purposes set forth in this Chapter.

As a condition of distribution of these land dedications and/or cash contributions in lieu of land dedications, the Village shall require that the school district, library district, park district or fire/rescue provider benefiting from such land dedications and/or cash contributions conduct a needs assessment and adopt a plan for acquisition of land and capital facilities needed to accommodate growth. (Ord. 2003-021, 7-21-2003)

§5-7-21: NEEDS ASSESSMENT; LAND AND CAPITAL FACILITIES ACQUISITION PLAN:

- (A) A needs assessment shall contain the following information for each district (school, library, fire/rescue provider and park):
1. A description of the nature and location of existing park, library, fire/rescue and school lands and existing park, school, library, fire/rescue facility and capital facilities within each district.
 2. An identification of the capacity of each school building, fire/rescue facility, library facility or park site within the particular district and of the number of students then enrolled in each school building.
 3. A projection of the character and location of new development that is expected to occur within each district or village during the succeeding ten (10) year period. The district or village may obtain the information necessary to make this projection from sources such as, but not limited to: municipalities, other units of government, agencies and consultants.
 4. An identification of the amount of lands that will be necessary within the school district and Village in order to accommodate the demands of such projected new development, and an

estimate of the public grounds acquisition costs that will be incurred or have been incurred by each district in acquiring such lands.

5. A general description of each classification of capital facilities (including construction, expansion or enhancement of any public facilities and the land improvement, design, engineering and professional costs related thereto) that will be necessary within each district in order to provide adequate capacity for the projected new development, and an estimate of the capital facilities costs that will be incurred by each district in constructing such capital facilities.

(B) Based upon the needs assessment, the school district, fire/rescue district or library district shall provide the Village an acquisition plan for lands and capital facilities. This acquisition plan shall:

1. Project for a planning period of at least five (5) years, the need for lands and capital facilities within the district or Village;
2. Set forth a schedule for the acquisition of such lands and facilities to meet the projected need (which schedule may be conditioned upon the availability of financing);
3. Indicate the size and general location of the needed lands and facilities;
4. Identify the estimated or incurred costs of acquiring such needed lands and facilities;
5. Set forth the anticipated funding sources for the acquisition of such needed lands and facilities;
6. Determine the feasibility of acquiring the needed land and facilities based upon the district's current financial condition;
7. Determine the feasibility of acquiring the needed land and facilities based upon the district's or village's estimate of the revenues (including, without limitation, cash in lieu of land dedication required by this Chapter) pursuant to the plan;
8. The impact on property taxes in the Village assuming the plan is implemented.

(C) If the Village deems it necessary, it may require an updated needs assessment and plan for acquisition of land and capital facilities from the district annually. The failure to require said assessment update shall not invalidate the requirements of this Chapter.

(Ord. 2003-021, 7-21-2003)

§5-7-22: TIME OF PAYMENT:

All land dedications and cash contributions imposed by this Chapter shall be due and payable upon final plat approval. However, the Village may agree that the payment of the cash contributions may be made at the time of building permit issuance in consideration of which the subdivider or developer shall execute an agreement which is attached as Appendix B to this Chapter, agreeing that the cash contributions payable will be adjusted in accordance with the requirements herein and further agreeing that the cash contributions may be expended for the purposes described in said Appendix B.

In calculating the fee at the time of platting, the Village will assume the maximum density permitted under the zoning classification approved pursuant to the table in Section 5-7-8 of this Chapter. For example, if the subdivision in question is zoned single-family, the Village will assume for purposes of calculating fees payable, pursuant to this Chapter, that all houses will have four (4) or more bedrooms. The benefiting district will then hold sufficient funds pending issuance of the building permit. The Village will direct the benefiting district to refund any overpayments resulting from the fact that houses with less than four (4) bedrooms are constructed. Refunds shall be made at time of issuance of the building permit.

For any lot which received final plat approval prior to the enactment of this Chapter, and which remains vacant at the time this Chapter is enacted, then all dedications and fees imposed by this Chapter shall be due and payable at the time a building permit is issued.

The Village may agree that payment of fees be made at the time of building permit issuance in consideration of which the subdivider or developer shall execute the agreement, which is attached as Appendix B to this Chapter, agreeing that the fees payable will be adjusted in accordance with the requirements of this Chapter and further agreeing that the fees may be expended for the purposes described in said Appendix B. In the event the Village agrees to delay the payment of the fees required under this Chapter to the time of building permit issuance, the Village shall notify the benefiting district, the cash contributions owed shall be based upon this Chapter or as provided in such future amendments hereto, which are in effect at the time the building permit is issued.

(Ord. 2003-021, 7-21-2003; amd. 2014 Code)

§5-7-23: ADDITIONAL INFORMATION:

In calculating any cash contributions in lieu of land dedication payable at time of issuance of building permit as provided in Section 5-7-22 of this Chapter, the Village shall use the fair market value as set forth in Section 5-7-6 of this Chapter or any amendment thereto and in effect at the time of the contribution and building permit issuance.

The Village recognizes the fact that developments may differ in their impact upon a community. Consequently, the Village reserves the right to negotiate dedications that are different from those contained in this Chapter when annexing property to the Village pursuant to an annexation agreement.

Previously approved final plats of subdivision shall be subject to all fees and dedications required by this Chapter. The required fees shall be paid to the benefiting district and required dedications conveyed to the Village by the applicant prior to the issuance of a building permit. (Ord. 2003-021, 7-21-2003)

APPENDIX A

AGREEMENT REGARDING THE RECEIPT
OF DEVELOPER SUBDIVISION CONTRIBUTIONS

WHEREAS, the Village of Tower Lakes, Illinois, on behalf of itself, its officers, employees and independent contractors (the "Village"), through its ordinances or through the provisions of its annexation agreements has required that developers make contributions to the Village, that the Village, in turn, may make available for other government bodies that are affected by the subdivision improvements; and

WHEREAS, such contributions may be in land or in money and, when transferred or paid over to those government bodies, inure to the benefit of those government bodies and not entirely to the direct benefit of the Village; and

WHEREAS, from time to time within the Village, and within other municipalities, disputes have arisen regarding the validity and amount of such contributions; and

WHEREAS, the Village is willing, at its discretion, to continue seeking the contribution of land or money but wishes to procure a commitment from other government bodies benefitted by the receipt of such contributions that those government bodies will: (a) acknowledge that the requirement that such subdivision contributions be made are totally within the discretion of the Village as to their existence, manner and amount; (b) the other government body that benefits from the contribution will pay the cost of defending any lawsuit that is filed challenging the appropriate amount of the contributions, the time at which they are to be made or any other aspect of the contributions; and (c) that the benefitted government body will comply with the terms of a final and nonappealable judicial determination by a court of competent jurisdiction rendered in connection with the lawsuit; and

WHEREAS, the Village is willing, in its discretion, to pay over or require contributions only to other government bodies that execute this Agreement:

NOW, THEREFORE, IT IS AGREED between the Village on behalf of itself and its officers, employees, and independent contractors, and _____, a government body within the State of Illinois (the "Benefiting Government"), and in consideration for the payment of money or the transfer of the land to the Benefiting Government, which the Village from time to time may within its discretion cause to be made by developers that are subdividing property, the Benefiting Government does agree, as follows:

1. The Benefiting Government acknowledges that, except as otherwise provided in the Village's ordinances and/or annexation agreements, the Village is not obligated to cause the payment of money or the transfer of land to the Benefiting Government. The Benefiting Government recognizes that the Village may, at its sole discretion, amend its ordinances or annexation agreements or its practices to discontinue the payment of subdivision contributions to the Benefiting Government.
2. A. In the event a lawsuit is filed against the Village, the Benefiting Government, and/or others by a developer that is subdividing property or any other person, corporation or entity that challenges the appropriateness, amount, timing or any other aspect of a subdivision contribution that, pursuant to the terms of the Village's ordinances or annexation agreements, has been paid or is due to the Benefiting Government, then the Benefiting Government does agree to pay the costs and litigation expenses (including reasonable attorneys' fees) incurred in defending such lawsuit. The costs and expenses shall be paid by the Benefiting Government when and as

incurred by the Village but in no event more than once a month. As a condition precedent to the payment of these costs and expenses, the Village shall submit to the Benefiting Government copies of the original statements reflecting the costs and expenses, together with the supporting documentation that may be reasonably requested by the Benefiting Government.

- B. The Village covenants and agrees that it shall employ competent and skilled legal counsel to represent the Benefiting Government and the Village, and further covenants and agrees that it shall keep the Benefiting Government fully advised as to the progress and status of the litigation. In particular, the Village shall provide to the Benefiting Government copies of all pleadings filed in the litigation and shall consult regularly (and shall cause its attorneys to consult regularly) with the Benefiting Government or its attorneys, as applicable, as to the strategy for defending the lawsuit. In no event may such litigation be compromised or settled by the Village without at least 30 days' prior written notice to the Benefiting Government. In the event that the Benefiting Government decides that it would prefer to be represented in the litigation by legal counsel of its own choosing, then the Benefiting Government shall be free to retain its own legal counsel for that purpose and to intervene in the litigation. In the event the Benefiting Government shall intervene in the litigation, this Agreement shall terminate from and after the date of the intervention and neither party to this Agreement shall have any further obligations under the terms of this agreement from and after that date and the Benefiting Government may choose to continue to defend or choose not to defend the suit; provided, however, that the Benefiting Government shall still be liable for all sums that have accrued pursuant to the above subparagraph 2-A and that remain due and owing from the Benefiting Government to the Village relating to the defense of any lawsuit filed in connection with dedications required for cash in lieu thereof collected for or distributed to the Benefiting Government.
3. In the event that a final and nonappealable judicial determination is made by a court of competent jurisdiction that contributions of land or money received by the Benefiting Government are, in whole or in part, excessive, the Benefiting Government shall promptly repay to the person who procures such a judgment, together with all other amounts judged by the court to be owing from the Benefiting Government. Provided, however, that in the event that a judicial determination should require the payment of damages or for the attorneys' fees of the plaintiff's attorneys, in addition to the return of contributions held to be excessive, the Benefiting Government shall pay all additional amounts in the same manner as is provided in paragraph 2-A.
4. In further consideration of the continued payment by the Village to the Benefiting Government of the subject contributions of land or money, the Benefiting Government agrees that its obligations under paragraphs 2 and 3 of this Agreement shall extend to both past and future cash and land contributions.
5. On or before June 1st of each year, every Benefiting Government that receives payments from the Village under this Agreement shall submit a report to the Village describing the manner in which the payments have been used. When this Agreement provides that money turned over to Benefiting Government is to be used for a specific purpose or within a specific time period, the report shall address those issues. If the Benefiting Government should fail to file such a report with the Village, the Village may delay the payment of any additional funds due the Benefiting Government until such time as a full report containing adequate information is transmitted to the Village.

6. This Agreement shall be terminated by either party for any reason or no reason at all upon 30 days' prior written notice to the other party evidencing the intention to so terminate this Agreement. But the termination of this Agreement shall not affect the continuing obligation of the Benefiting Government or the Village with regard to claims or damages allegedly arising out of the Village's efforts prior to termination to distribute contributions, or to the actual distribution of subdivision contributions.

DATED this ___ day of _____, ____.

Village of Tower Lakes

Benefiting Government:

Village President

Title:_____

(SEAL)

(SEAL)

ATTEST:

ATTEST:

Village Clerk

Secretary

APPENDIX B

AGREEMENT

The Village of Tower Lakes, an Illinois municipal corporation (the "Village") and _____, ("Owner") agree as follows. For purposes of this Agreement, "Owner" is defined as the individual, firm, association, syndicate, co-partnership, corporation, trust, or any other legal entity having a proprietary interest of record in the subject property, except that in the case of a trust the Owner shall be deemed to include the beneficiary or beneficiaries and the trustee thereof. The term "Owner" also includes the Owner's authorized agent or any person authorized by such owner to apply for Village approval in connection with a final plat of subdivision, building permit, or other improvement or development upon real property.

The Village has approved a final plat of subdivision or a final plat of a planned development at the request of Owner for the real estate legally described in Exhibit 1 attached hereto and made a part hereof (the "Land"). Accordingly, pursuant to the Village's Village Code, certain cash contributions in lieu of dedications for library, fire/rescue, park and recreation, and school lands are immediately due the benefiting district from the Owner.

1. Owner has, however, requested that the payment of the aforesaid cash contributions be delayed and that the same become due and payable on a per-dwelling-unit basis at the time the Village issues a building permit for the particular dwelling unit.
2. In consideration for the Village agreeing to delay the required payment to the benefiting district of the cash contributions in accordance with Paragraph 1 above, Owner hereby agrees as follows:
 - A. The amount of cash contributions owed shall be calculated based upon Ordinance No. _____ or as provided for in such other future ordinance amending or replacing Ordinance No. _____ which is in effect at the time of the issuance of a building permit; and
 - B. Notwithstanding any present or future law, regulation and/or legal precedent to the contrary, the unit of local government or benefiting district that is the ultimate recipient of the subject cash contributions may expend such contributions for any of the following purposes intended to serve immediate or future needs of the residents and children of the Owner's subdivision or planned development: (1) for the acquisition of land; (2) for site improvements such as, by way of example, streets, curbs, gutters, stormwater control, and utility extensions; (3) for construction of capital facilities, including, by way of example, new buildings and structures, and the expansion or enhancement of existing buildings and structures; (4) for the acquisition of capital equipment which would qualify as a depreciable property under Internal Revenue Service regulations; and (5) for so-called soft costs directly related to the foregoing items (2) or (3) such as architectural and engineering costs.
3. This Agreement constitutes a covenant that is appurtenant to and runs with the Land. Either this Agreement or a memorandum thereof may be recorded against legal title to the Land by either party hereto; provided, however, it shall be a condition of the Village's issuance of the first building permit for a dwelling unit on the Land that Owner shall provide satisfactory evidence to the Village that this Agreement or a memorandum thereof has been recorded against legal title to the Land.
4. Owner represents and warrants to the Village that it is the sole holder of record fee title to the Land.

IN WITNESS WHEREOF, the Village and the Owner have caused this Agreement to be duly authorized, executed and entered into as of the day of , .

Village President

Owner

ATTEST:

Village Clerk
